

# MEMORANDUM

Agenda Item No. 11(A)(14)


**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 6, 2015

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution approving allocation,  
subject to recapture, of up to  
\$10,000,000.00 from Building  
Better Communities General  
Obligation Bond Program Project  
No. 124 to Wexford Miami, LLC  
to fund University of Miami Life  
Science and Technology Park  
Project

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney



RAC/smm





# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 6, 2015

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County Attorney

**SUBJECT:** Agenda Item No. 11(A)(14)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required



Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(14)  
10-6-15

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING ALLOCATION, SUBJECT TO RECAPTURE, OF UP TO \$10,000,000.00 FROM BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 124 TO WEXFORD MIAMI, LLC TO FUND UNIVERSITY OF MIAMI LIFE SCIENCE AND TECHNOLOGY PARK PROJECT, AND DIRECTING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE TERMS OF A GRANT AGREEMENT WITH WEXFORD MIAMI, LLC PURSUANT TO BOND PROGRAM'S ADMINISTRATIVE RULES AND PRESENT SUCH GRANT AGREEMENT OR, ALTERNATIVELY, A REPORT FOR CONSIDERATION BY BOARD

**WHEREAS**, Appendix A to Resolution No. R-914-04 (the "Public Infrastructure Resolution"), lists projects eligible for funding from the Building Better Communities General Obligation Bond Program (the "Bond Program") by project number, municipal project location, commission district, project description, street address, and project funding allocation; and

**WHEREAS**, one of the projects listed in Appendix A to the Public Infrastructure Resolution and approved by the voters for funding is Project No. 124 – Economic Development Fund ("Project 124") with a project description that states "Provide infrastructure improvements to spur economic development and attract new businesses to the community in order to create jobs"; and

**WHEREAS**, the goal of Project 124 is to encourage private sector development through public infrastructure investments that will create jobs and cause economic development which will have long term benefits to the community; and

**WHEREAS**, on July 21, 2015, Wexford Miami, LLC submitted an application for Project 124 funding, a copy of which is attached to this resolution as Exhibit A, for funding public infrastructure costs associated with the construction of a 14-story, 244,000 square foot



mixed-use hotel and innovation center, that will provide the physical facilities, amenities, and programming essential to build a world-class innovation center in the heart of Miami (the “University of Miami Life Science and Technology Park Project”); and

**WHEREAS**, this Board has previously allocated the entire Project 124 funds to other infrastructure projects, subject to the negotiation by the County Mayor or the County Mayor’s designee (the “County Mayor”), in accordance with Resolution No. R-123-15, of a Grant Agreement or Interlocal Agreement to be presented to this Board for approval; and

**WHEREAS**, in the event that the County Mayor is unable to successfully negotiate a Grant Agreement or Interlocal Agreement and/or this Board does not approve the award of the Project 124 funds to one or more of the proposed Project 124 grant recipients to whom the Project 124 funds have been allocated, such funds will be recaptured and be available for re-allocation to other eligible Project 124 projects (the “Recaptured Funds”); and

**WHEREAS**, in the event that Recaptured Funds become available for re-allocation, this Board wishes to prioritize and approve an allocation of up to \$10,000,000.00 from Project 124 to Wexford Miami, LLC for the funding of public infrastructure costs for the University of Miami Life Science and Technology Park Project in accordance with the administrative rules of the Bond Program (the “Administrative Rules”) such that Wexford Miami, LLC shall be next in line to receive any Project 124 Recaptured Funds; and

**WHEREAS**, the individual Grant Agreement between the County and Wexford Miami, LLC shall be submitted to the Board for approval in the future,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

**Section 1.** The foregoing recitals are approved and incorporated in this Resolution.



**Section 2.** An allocation, subject to the availability of Recaptured Funds, of up to \$10,000,000.00 from Project 124 to Wexford Miami, LLC for the University of Miami Life Science and Technology Park Project is approved.

**Section 3.** The County will reallocate Recaptured Funds to projects in the order in which projects are allocated Project 124 Funds (i.e. the oldest allocation will receive Recaptured Funds first). Recaptured Funds shall be allocated to the University of Miami Life Science and Technology Park Project as such Recaptured Funds becomes available until such project is fully funded in the amount of the allocation approved by this Board.

**Section 4.** If and when any Recaptured Funds become available, the County Mayor is directed to negotiate the terms of a Grant Agreement with Wexford Miami, LLC pursuant to the Administrative Rules. The County Mayor shall prepare and present a Grant Agreement to this Board for consideration within six months of the date any Recaptured Funds for which the University of Miami Life Science and Technology Park Project is eligible become available, provided, however, that if the County Mayor is unable to successfully negotiate the terms of such Grant Agreement, a report detailing the status of the negotiations shall be presented to this Board instead and the County Mayor shall place the completed report on an agenda of the Board pursuant to Ordinance No. 14-65.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:



Jean Monestime, Chairman  
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Dennis C. Moss  
Sen. Javier D. Souto  
Juan C. Zapata

Daniella Levine Cava  
Audrey M. Edmonson  
Barbara J. Jordan  
Rebeca Sosa  
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 6<sup>th</sup> day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

JRA

Juliette R. Antoine



**Economic Development Fund**  
Building Better Communities  
General Obligation Bond Program

**EDF General Project Overview**

University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center

Project Title

Wexford Miami, LLC

Name of Business

7/21/15

Date Submitted



Jack Osterholt, Director  
Regulatory and Economic Resources Department  
STEPHEN P. CLARK CENTER, 111 N.W. 1<sup>ST</sup> STREET, SUITE 1900  
MIAMI, FLORIDA 33128  
Telephone (305) 375-1254 Fax (305) 679-7895  
[www.miamidade.gov/oedit](http://www.miamidade.gov/oedit)





# ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW



## 1. BUSINESS INFORMATION

- A. Name of Business Unit: Wexford Miami, LLC
- B. Mailing Address: 801 W. Baltimore Street, Suite 505  
Street Address  
 Baltimore MD 21201  
City State Zip Code
- C. Primary Contact Person of Parent Company (if applicable):  
 Kevin Keyser or Sandy Weeks
- D. Title: Senior Director, Development and General Counsel, respectively  
 Mailing Address: 801 W. Baltimore Street, Suite 505  
Street Address  
 Baltimore MD 21201  
City State Zip Code  
 Telephone: 410-649-5629 Fax: 410-649-5733  
 Email: kevin.keyser@wexfordscitech.com Website: www.wexfordscitech.com
- E. Federal Employer Identification Number: 26-3848153
- F. Unemployment Compensation Number: 1623138
- G. Florida Sales Tax Registration Number: 23-8015711720-9
- H. What is the business's tax year? (ex: Jan 1 to Dec 31): Jan 1 to Dec 31
- I. Is this business an active and duly registered for-profit Florida corporation?  
 Yes ☒ No ☐ If no, please explain: \_\_\_\_\_

Indicate ownership status: (Note: Responding to this question is voluntary and not required. The County does not use this information as a factor in determining the award of County funds or contracts.) Check all that apply.

Minority Owned Business ☐ Woman Owned Business ☐ Privately Owned Business ☐  
 Publicly Owned Business ☒ None ☐

Is this business an active and duly registered not-for-profit 501(C)(3) Florida corporation?

Yes ☐ No ☒

- J. Will the business requesting grant funds own or lease the property where the project will be located?  
 Own ☐ Lease ☒ (Note: Provide a copy of the deed showing ownership or a copy of the lease.) See Attachment for ground lease.
- K. If the business will own the property, is or will the property be encumbered by any mortgage and if so provide the balance of the mortgage(s). N/A

## 2. PROJECT OVERVIEW

- A. Which of the following best describes this business<sup>1</sup>:
- ☐ New business unit to Miami-Dade County creating jobs.
- ☒ Existing Miami-Dade County business creating/expanding jobs in Miami-Dade.  
 (If an expansion, how many jobs are currently in the expanding business unit?) 500
- ☐ Developer building new construction for business \_\_\_\_\_ (name of the company) that will be creating \_\_\_\_\_ jobs.

<sup>1</sup> Must be a separate business unit or reporting unit of a business unit that is or will be registered with the State of Florida for unemployment compensation purposes.



# ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW



B. How many individuals are employed at all Florida locations? (FTE<sup>2</sup>)

500 FTEs

C. Are any jobs being transferred from other Florida locations? \_\_\_\_\_

Yes ☐ No ☒ If yes, how many jobs and from where? \_\_\_\_\_

Why are these jobs being transferred? \_\_\_\_\_

D. Project Location Information:

(i) What is the project's proposed location address:

1900 NW 7th Avenue

Street Address	<u>Miami</u>	<u>FL</u>	<u>33136</u>
City		State	Zip Code

(ii) What is the project's current location address (if different):

1951 NW 7th Avenue

Street Address	<u>Miami</u>	<u>FL</u>	<u>33136</u>
City		State	Zip Code

(iii) Is the project location within a current or proposed Brownfield site / area?

Yes ☒ No ☐ If yes, attach a copy of the official document designating the Brownfield area.

See Exhibit B

(iv) Is the project location in an Enterprise Zone, Empowerment Zone or a Targeted Urban Area as defined in Section 30A-129(2) of the Miami-Dade County, FL Code of Ordinances?

Yes ☒ No ☐ If yes, which zone? Central Enterprise and North Central Empowerment

E. Give a full description of this proposed project. (Not to exceed 500 words. Be specific.)

See attached.

F. Explain how this proposed project will spur economic development, attract new businesses to Miami-Dade County and create jobs.

See attached.

G. Provide a complete project line item budget, including estimated cost, sources and uses of funds, a detailed description of project elements, and the portion of the project proposing to utilize Economic Development Fund grants. (EDF grants can only be used for public infrastructure.) See attached and Exhibit E.

H. What proportion of gross operating revenues from this project are anticipated to represent sales to customers located outside of Miami-Dade County? (If sales are not a reasonable measure, use another basis for measure and provide explanation below.)

75% Explain, if necessary: This percentage represents sales to hotel and restaurant customers located outside of Miami-Dade County.

<sup>2</sup> An FTE or "full-time equivalent" job implies at least 35 hours of paid work per week per employment position.

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# ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW



## 3. JOB AND WAGE OVERVIEW

A. How many new FTE jobs are to be created as part of this project? What are the initial average wage and benefits? See attached.

Occupation	Avg. Wage	Avg. Benefits	Year 2010	Year 2020	Year 2030	Year 2040	Year 2050
Prof., Scientist	\$	\$					
Research Tech.							
Senior Mgmt							
Admin. Support							
Production Wrks							
Other							

Jobs created, continued

Occupation	Year 2010	Year 2020	Year 2030	Year 2040	Year 2050	Year 2060	Year 2070	Year 2080	Year 2090
Prof., Scientist									
Research Tech.									
Senior Mgmt									
Admin. Support									
Production Wrks									
Other									

B. What employee benefits are included above? (e.g. health insurance, 401(k) contributions, vacation and sick leave, etc.) See attached.

C. If this is an existing business located in Miami-Dade, then how many jobs are expected to be retained as part of this project? (Jobs in jeopardy of leaving Miami-Dade should only be included here.) \_\_\_\_\_ (Note: EDF grants cannot be used solely for the purpose of retaining existing jobs.)

D. What is the business' principal industry classification code? (Use North American Industry Classification System - NAICS.): 531120: Lessors of Nonresidential Buildings

If more than one NAICS code applies, then provide a breakdown of the project's primary business activities:

NAICS Code	Description	%	\$
		%	\$
		%	\$
		%	\$

## 4. CAPITAL INVESTMENT OVERVIEW

A. Describe the capital investment in real and personal property (Examples: construction of new facility; remodeling of facility; upgrading, replacing, or buying new equipment. Do not include the value of land purchased for construction of a new building but include architect, engineering and design costs). See attached.



# ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW



- B. List the anticipated amount (thousands of dollars) and type of major capital investment to be made by the applicant in connection with this project: (Attach separate schedule if investment will be made over more than five years) See attached, Exhibit E.

	Year ____	Year ____	Year ____	Year ____	Year ____
Land	\$	\$	\$	\$	\$
New Construction (excl. public infrastructure)	\$	\$	\$	\$	\$
Building Renovations	\$	\$	\$	\$	\$
Manufacturing Equipment	\$	\$	\$	\$	\$
R & D Equipment	\$	\$	\$	\$	\$
Other Equipment (computer equipment, office furniture, etc)	\$	\$	\$	\$	\$
<b>Total Capital Investment</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

- C. What is the estimated square footage of the new or expanded facility? 259,688 SF plus garage  
D. What is the deadline to make the location decision (date)? 2Q 2016  
E. What is the anticipated date that construction will begin? 1Q 2017  
F. What is the anticipated construction completion date? 3Q2018  
(If this project is being built in phases, then provide a commencement and completion date for each phase.)  
G. What is the anticipated date that operations will commence? 3Q2018  
H. Submit documentation demonstrating financial capacity and financial commitments using other non-County sources to complete the project. See Exhibit E for sources and see Exhibit F for BioMed Realty (Wexford's parent company) financials.

## 5. PUBLIC INFRASTRUCTURE NEEDS

- A. Describe the type of public infrastructure investment needed. See attached.  
B. What is the total anticipated cost of public infrastructure needed for this project? \$ \$30,894,413  
C. EDF grants will be disbursed only after the public infrastructure investments are complete and negotiated performance benchmarks are met. Describe the business's capacity to finance the public infrastructure costs. See attached and Exhibit F.

## 6. ECONOMIC IMPACT AND CORPORATE RESPONSIBILITY

- A. Provide a brief synopsis of any special economic impacts/benefits the project is expected to stimulate in the community, the County, and the rest of South Florida. See attached.  
B. Will business operations being supported with an Economic Development Fund grant establish a plan for maximizing the employment of persons with family incomes less than 80% of the County's median household income, or persons living in Census Block Groups where 50% of residents live in households with income less than 80% of the median? If yes, explain how that plan will be developed and implemented. Yes, see attached.  
C. Will the business operations be conducted in LEED certified (or equivalent energy efficiency rating system) buildings? If yes, at what level of certification

Yes ☒ No ☐ LEED Gold



# ECONOMIC DEVELOPMENT, GENERAL PROJECT OVERVIEW



D. List and explain any criminal or civil fines or penalties or ongoing investigations or debarments that have been performed/imposed upon the company, its executives, its principals or its affiliates and any bankruptcy proceedings (within the past 10 years) of the applicant or its parent company. Do not leave this question blank. If there are no issues to be identified, write "NONE." Failure to disclose this information may result in this application being denied. NONE

E. Is the company current with all its state, local and federal taxes? If no, please explain.

Yes ☒ No ☐

F. Provide any additional information you wish considered as part of this review of your request for incentives or items that may provide supplementary background information on your project or company. See Exhibit F

## 7. SIGNATURES

Application Completed By:

[Signature]  
Signature

Kevin Keyser  
Name

Senior Director, Development  
Title

Wexford Science & Technology, LLC  
Company

Address, if different than mailing address

410-649-5723  
Phone number

410-649-5733  
Fax Number

kevin.keyser@wexfordscitech.com  
Email Address

July 21, 2015  
Date

Name of contact person, if different than above

Phone Number

Address

Address

Email Address

To the best of my knowledge, the information included in this application is accurate.

[Signature]  
Signature (Authorized Company Officer)  
REQUIRED

Joseph A. Reagan, Jr.  
Name

Vice President, Development  
Title

Wexford Science & Technology, LLC  
Company

3535 Market Street, Suite 1230  
Philadelphia, PA 19104

Address, if different than mailing address

215-590-5023  
Phone number

215-590-5021  
Fax Number

joseph.reagan@wexfordscitech.com  
Email Address

July 21, 2015  
Date



**Economic Development Fund  
Building Better Communities  
General Obligation Bond Program**

**University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center**

**Attachments**

**1. BUSINESS INFORMATION**

**J. Will the business requesting grant funds own or lease the property where the project will be located?**

See **Exhibit A** for ground lease.

**2. PROJECT OVERVIEW**

**D. Project Location Information**

(iii) Brownfield area document (see **Exhibit B**).

**E: Give a full description of this proposed project. (Not to exceed 500 words. Be specific.)**

The second phase of the University of Miami Life Science and Technology Park ("LSTP" or the "Park") is the ground-up construction of a 14-story, 244,000 SF mixed-use hotel and innovation center, that will provide the physical facilities, amenities, and programming essential to build a world-class innovation center in the heart of Miami ("Building 2" or "the Project"). The Park is located within the eastern edge of the University of Miami Health District and adjacent to the historic Overtown community. Given the Park's unique position, the Project would not only be a game changer for Miami's burgeoning innovation economy, but it would also provide pathways to the world of innovation to traditionally underrepresented populations. Wexford Science & Technology ("Wexford"), the Park's developer, is partnering with American Communities Trust (ACT), a nonprofit with community impact expertise, to develop a robust community engagement program that will leverage resources at the Park to expand educational opportunities to area residents.

The overall building program consists of a shared lobby, approximately 90,000 SF of innovation event and workspace, 53,000 SF of office space, and a 148-key hotel with amenities. The building's lobby is designed as a gathering space for both building users and the surrounding neighborhood. This space will include a micro food market featuring local vendors, restaurant and café options, and a daycare that would service the broader community. The innovation space will be programed by a best-in-class operator, CIC, who has a track record of attracting and retaining the industry's top talent, as well as billions in venture capital. CIC builds a highly dense co-working environment that operates on a collaborative model, providing start-ups and fast growing companies with more cost-effective rates than traditional office leases. The office portion of the building program will be geared toward established companies that seek to be near the creative environment CIC creates. The 148-key limited service hotel will sit on top of the building and complement the needs of the Park's tenants and also serve those visiting the Health District.

Building 2 will be physically connected to the existing building at 1951 NW 7<sup>th</sup> Avenue (Building 1) through a 15,214 SF glass-enclosed, Public Innovation Space. This public space will become the identity for the Park; an iconic structure that will serve as the center of gravity for Miami's innovation ecosystem. This covered space will be capable of hosting events for up to 1,000 people, from community gatherings



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to industry events and will be programmed by CIC and CIC's sister non-profit, Venture Café Foundation (VCF). Within the glass box will be a 300-person climate-controlled flex hall ideal for conferences and smaller events. VCF's weekly events – sometimes drawing up to 800 people per event at its Boston and St. Louis locations – are essential to creating the collaborative environment that allows companies and communities to flourish. Parking for Buildings 1 and 2 will be accommodated by minimum 646-car garage that will be shared by building tenants and visitors.

See **Exhibit C** for drawings and renderings.

**F. Explain how this proposed project will spur economic development, attract new businesses to Miami-Dade County and create jobs.**

Through its partnership with CIC, the Project will attract hundreds of small and fast-growing companies and also support the University of Miami's efforts to commercialize its research and scientific advancements. As seen in CIC's flagship location at Kendall Square in Cambridge, MA, as its client companies outgrow CIC's space, they continue to locate and reinvest in the immediate vicinity. For example, Android, the largest mobile phone operating system in the world, was co-founded at CIC. After being acquired by Google, the environment in Kendall Square attracted Google to start a Cambridge operation. Google's Cambridge office, which stayed a CIC client for many years until it outgrew CIC's space, now spans over 300,000 SF and employs over 800 people. The strength of the entrepreneurial ecosystem at CIC has brought other benefits as well, attracting more than \$7B of venture capital. In addition to startup companies, their acquirers, and venture capital, CIC also forms a magnet for large innovation companies- Amazon, Apple, Facebook, Disney, Royal Dutch Shell, Boeing, Nestle and many others have established substantial presences within CIC buildings, in most cases their first presence in the region.

The innovation center within the project would support a similar environment, attracting new businesses to Miami Dade County. An economic impact report prepared by Fishkind & Associates (see **Exhibit D**) anticipates that the Project would create 476 permanent jobs, with a total economic output of 868 jobs and \$137,087,114 annually. The permanent jobs total breaks down as 243 CIC jobs (this model conservatively uses 300 SF per employee, however in CIC's existing locations the SF per employee is more dense at 125 SF per employee), 137 office jobs, 93 hotel and restaurant jobs, the majority of which will be accessible to individuals with no higher than a high school degree, and 4 daycare jobs. This conservative model does not even take into account the catalytic effect the innovation center will have.

The Project's construction will also create 600 temporary jobs, for a total economic output of 1,156 jobs and \$156,477,420.

**G. Provide a complete project line item budget, including estimated cost, sources and uses of funds, a detailed description of project elements, and the portion of the project proposing to utilize Economic Development Fund grants (EDF grants can only be used for public infrastructure).**  
See **Exhibit E** for the budget, sources and uses, and EDF grant uses and see Question 2E, above, for a description of project elements.

### **3. JOB AND WAGE OVERVIEW**



Economic Development Fund  
 Building Better Communities  
 General Obligation Bond Program  
 University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center  
 July 21, 2015

**A. How many new FTE jobs are to be created as part of this project? What are the initial average wage and benefits?**

See table below, which provides the absorption rates for the jobs projected in Exhibit D.

Occupation	Avg Wage	Avg Benefits	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022	Total
Prof. Scientist	\$80,000	\$24,000	18	18	14	14	8	72
Research Tech	\$55,000	\$16,500	24	24	19	20	10	97
Senior Mgmt	\$125,000	\$37,500	6	6	4	5	3	24
Admin Support	\$73,000	\$21,900	12	12	10	10	5	49
Office	\$60,000	\$18,960	34	34	27	28	14	137
Accommodation	\$23,800	\$4,522	18	19	14	15	8	74
Restaurant/Daycare	\$24,500	\$4,655	5	6	5	4	3	23
			117	119	93	96	51	476

**B. What employee benefits are included above?**

It is anticipated that the Project's tenants will provide employee benefits, which may include health insurance, retirement, vacation, and sick leave, with average benefit values as noted in Exhibit D, Appendix Table 2.

#### 4. CAPITAL INVESTMENT OVERVIEW

**A. Describe the capital investment in real and personal property (Examples: construction of new facility; remodeling of facility; upgrading, replacing, or buying new equipment. Do not include the value of land purchased for construction of a new building but include architect, engineering and design costs).**

The Project's capital investment involves the ground-up construction and associated site development costs of the 14-story hotel and innovation center, the construction of a 646-car garage that will service Buildings 1 and 2, and the construction of the Public Innovation Space. The capital investment will also include the tenant improvement costs for the CIC and office space, as well as the FF&E costs for the hotel. Total investment is \$112,077,800.

#### 5. PUBLIC INFRASTRUCTURE NEEDS

**A. Describe the type of public infrastructure investment needed.**

A number of public infrastructure improvements will be made to the site, as detailed on Exhibit E, UM LSTP Public Infrastructure Costs. In addition to work such as utility relocation and pedestrian improvements, the Project includes the construction of a public garage to service both the Project and Building 1, and it includes the construction of the Public Innovation Space.

The Public Innovation Space is a publically-accessible, landscaped, covered space connecting Buildings 1 and 2, which will create an iconic gathering place for the innovation community and the surrounding neighborhoods. Similar to District Hall in Boston, MA – the first dedicated civic innovation space in the country – the Public Innovation Space will be capable of hosting hundreds of events each year, including low and no-cost events for the local community and non-profits. Within the larger glass box, there will be



Economic Development Fund  
Building Better Communities  
General Obligation Bond Program  
University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center  
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a 300-person, conditioned “flex hall” that can host smaller conferences, seminars, and community meetings. The Public Innovation Space will be highly-programmed through a partnership with CIC’s non-profit sister organization, Venture Café Foundation (VCF), and provide constant engagement with the community.

**C. EDF grants will be disbursed only after the public infrastructure investments are complete and negotiated performance benchmarks are met. Describe the business’s capacity to finance the public infrastructure costs.**

Wexford Science & Technology, LLC, the owner of Wexford Miami, LLC, is a wholly-owned subsidiary of BioMed Realty (NYSE: BMR), and has access to capital sufficient to cover the public infrastructure costs (see **Exhibit F** for BioMed financials).

## **6. ECONOMIC IMPACT AND CORPORATE RESPONSIBILITY**

**A. Provide a brief synopsis of any special economic impacts/benefits the project is expected to stimulate in the community, the County, and the rest of South Florida.**

In addition to the economic impacts detailed in response to Question 2F, the Project will make special efforts to expand access to the innovation economy to traditionally underrepresented populations.

- CIC and Venture Café Foundation have a history of partnering with local organizations to increase the inclusiveness of the innovation economy:
  - In Cambridge, CIC works closely with the Cambridge Office of Workforce Development to place 12-20 students each summer with CIC startups, giving at-risk student direct exposure to the world of entrepreneurship and innovation
  - CIC often hosts tours or provides free event space to mission-aligned organizations, like a recent “Girl Geek” dinner hosted at District Hall in Boston to encourage girls to pursue STEM education and careers.
  - CIC and VCF have a long list of partners focused on inclusion and accessibility, including LaunchCode, a coder development program which seeks to break cycles of un employed Americans stuck in cycles of low wage jobs
- Wexford has consistently demonstrated the importance of community engagement and accessibility at their “Knowledge Communities” throughout the country. A few examples include:
  - In UM LSTP, Wexford has provided space in Building 1 to community and civic partners at low or reduced rates, such as SCORE Miami, which helps small business and entrepreneurs to grow and prosper by offering free mentoring, financing assistance, and business consulting. Wexford also donates approximately \$11,000 annually in free meeting space to local organizations like the Overtown Children and Youth Coalition
  - In Baltimore, Wexford’s UMB BioPark facilitated a one-of-a-kind partnership between a community college, a research institution, and the Park to provide real pathways to secure jobs as research technicians within the Park. Wexford is exploring ways to replicate this model partnership in other Knowledge Communities
  - Wexford also incorporates community-friendly spaces in its Knowledge Communities whenever feasible. In Philadelphia, the ground floor of a Wexford building features an incredible hand-on civic innovation workshop for youth, adults, and community organizations to “make and do great things”



Economic Development Fund  
Building Better Communities  
General Obligation Bond Program  
University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center  
July 21, 2015

**B. Will business operations being supported with an Economic Development Fund grant establish a plan for maximizing the employment of persons with family incomes less than 80% of the County's median household income, or persons living in Census Block Groups where 50% of residents live in households with income less than 80% of the median? If yes, explain how that plan will be developed and implemented.**

Wexford has a track record of local hiring and MBE participation, and plans to maximize employment within the low-income community for the construction and operation of Building 2. During the construction of Building 1, Wexford used the Vailon group to increase and track local and minority participation. Of the 310 laborers employed during construction, 20% came from the local Redevelopment Area, which is mostly comprised of Severely Distressed Census Tracts, and 49% resided within the City of Miami. Forty-seven percent of the building's permanent, operational staff is comprised of workers and vendors within the immediate 11 zip codes. Wexford would again employ the services of a local workforce consultant to ensure that the local community is included in all aspects of the Project.



**AMENDED AND RESTATED GROUND LEASE**

dated as of February 19, 2010

between

**UNIVERSITY OF MIAMI  
and  
7th AVE MARKET, LLC,  
collectively, Ground Lessor**

and

**WEXFORD MIAMI, LLC  
Ground Lessee**



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Exhibits:     Exhibit A – Intentionally Omitted  
                  Exhibit B – Legal Description of Parking Area  
                  Exhibit C – Project Plan  
                  Exhibit D – Legal Description of Tower Land  
                  Exhibit E – Legal Description of Surrounding Area  
                  Exhibit F – Form Commencement Date Letter  
                  Exhibit G – Legal Description of Access Drive  
                  Exhibit H- Legal Description of Expansion Land  
                  Exhibit I - Legal Description of Air Parcel

Schedules:    Schedule 2.2.5 – Permitted Exceptions  
                  Schedule 6.1 – Construction Documents  
                  Schedule 12.4.3 – Leasing Guidelines



## AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE ("Lease") is made as of February 19, 2010, between UNIVERSITY OF MIAMI, a Florida non-profit corporation and 7th AVE MARKET, LLC, a Florida limited liability company (collectively, "Ground Lessor"), and WEXFORD MIAMI, LLC, a Delaware limited liability company ("Ground Lessee").

### RECITALS

A. Ground Lessor and Ground Lessee entered into a certain Ground Lease dated as of April 16, 2009, as amended by an amendment dated June 29, 2009, a second Amendment dated September 30, 2009 and a third amendment dated December 30, 2009 (collectively, the "Original Ground Lease"). Pursuant to the Original Ground Lease, Ground Lessor has leased certain Property (as defined in and described in the Original Ground Lease) to Ground Lessee.

B. Ground Lessor and Ground Lessee are parties to an Amended and Restated Development Agreement dated April 6, 2009 (as amended, the "First Restated Development Agreement"). Pursuant to the First Restated Development Agreement and the Original Ground Lease, Ground Lessee has agreed to construct certain initial improvements (as defined and described in the First Restated Development Agreement and Original Ground Lease) on the Property described in the Original Ground Lease.

C. Ground Lessor has agreed to lease to Ground Lessee certain additional land, and Ground Lessee has agreed to enlarge and expand the initial improvements described in the Original Ground Lease such that such enlarged initial improvements shall be built on the land described in the Original Ground Lease and such additional land. In order to reflect the changes to the Ground Lease to adequately and properly account for the leasing of such additional land and the construction of the enlarged initial improvements, Ground Lessee and Ground Lessor have agreed to amend and restate the Original Ground Lease by entering into this Lease.

D. Concurrently herewith, Ground Lessor and Ground Lessee are amending and restating the First Restated Development Agreement in its entirety pursuant to a certain Second Amended and Restated Development Agreement of even date herewith (the "Development Agreement").

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ground Lessor and Ground Lessee agree, intending to be legally bound, that the Original Ground Lease is amended and restated in its entirety to read as follows:

### 1. INTERPRETATION

1.1 **Definitions.** When used in this Lease, the following capitalized terms shall have the meanings indicated:

**Additional Land Commencement Date:** the date of this Lease.



**Additional Property:** the Expansion Land and the portion of the Parking Area described in Exhibit B hereto as the "Parking Parcel 1."

**Additional Rent:** all sums payable by Ground Lessee under this Lease other than Base Rent, including without limitation, Administrative CAM, Impositions, sums payable on account of an Event of Ground Lessee Default and all other costs, expenses, charges and amounts which Ground Lessee is required to pay under this Lease, including and any and all sales tax (now existing or hereafter imposed) which is due on Rent.

**Access Drive:** the parcel of land legally described in Exhibit G attached hereto.

**Administrative CAM:** (i) from the Rent Commencement Date until the first anniversary of the Rent Commencement Date a per annum charge equal to the product of (A) seventy five cents (\$0.75) and (B) that portion of the Improvements that is occupied by subtenants who are obligated to commence paying rent to Ground Lessee and (ii) from and after the first anniversary of the Rent Commencement Date an amount equal to the product of (A) seventy five cents (\$0.75) and (B) the number of rentable square feet in the Improvements whether or not any of such space is leased to any subtenants, all of such charges to be used to reimburse Ground Lessor for the costs reasonably incurred by Ground Lessor in connection with the Property and/or Surrounding Areas.

**Affiliate:** with respect to either party hereto, any Person that controls, is controlled by, or is under common control with, such party. For such purpose, "control" means the power, directly or indirectly, to control the management, policies and day-to-day activities of the Person in question.

**Air Parcel:** the parcel of air space legally described in Exhibit I.

**Applicable Standards:** the standards generally and customarily applicable from time to time during the Term to buildings in the Central Business District or Brickell areas of Miami-Dade County, Florida of an age comparable to the age of the Improvements, with the understanding that the Initial Improvements and Replacement Improvements shall be constructed according to first class standards.

**Base Rent:** collectively, the Land Base Rent and the Parking Area Base Rent.

**Bio-Technology Suites:** a collection of small labs and support space for emerging local companies, the area of which, when aggregated with the area of the Soft Landing Area, shall not be less than 25,000 rentable square feet.

**Building:** the seven (7) story mixed-use research/office building containing approximately 262,849 gross square feet, comprised of the Tower Building and the Expansion, being part of the Initial Improvements, as depicted in the Final Construction Documents, and any alterations or replacements thereof performed in accordance with this Lease.

**Central Business District:** the area of the City of Miami bounded on the east by Biscayne Blvd, on the west by I-95, on the south by the Miami River and on the north by N.E. 5th Street.



**Change of Control:** if (i) Wexford S&T or Wexford Equities shall cease to control the policies, management and day-to-day operations of Ground Lessee, or (ii) if there is a sale or transfer of 50% or more in the ownership of membership or other equity interests in Ground Lessee to any Person other than a wholly-owned subsidiary of Wexford Equities or Wexford S&T.

**Change in Use Notice:** as defined in Section 5.1.2.

**Claims:** any and all third party claims, demands, causes of action, suits, judgments, losses, damages, injuries (including death), liabilities, penalties, enforcement actions, liens, encumbrances, costs or expenses (including, without limitation, reasonable attorneys' fees).

**Cancer Clinical Care:** cancer patient care and the administration of chemotherapy and radiation therapy, except that "Cancer Clinical Care" shall exclude the following: (i) proton beam radiation and services ancillary thereto, such as imaging for treatment planning purposes; (ii) cancer related research and development, whether conducted by University researchers or other Persons, whether or not such other Persons are Affiliates of the University; and (iii) clinical cancer trials, whether conducted by the University or other Persons, whether or not such other Persons are Affiliates of the University.

**Commencement Date:** collectively, the Original Commencement Date and the Additional Land Commencement Date.

**Commencement Date Letter:** as defined in Section 3.1.1.

**Completion Guaranties:** the Redwood Completion Guaranty together with the Wexford Completion Guaranty.

**Construction Commencement:** when construction of any part of the Building shall have actually commenced, but not prior to issuance of all Land Use Approvals that are required to be issued prior to commencement of construction of such part of the Building.

**Core and Shell:** with respect to any improvements, those portions of such improvements that constitute all foundation elements, stair towers, elevator shafts, concrete columns, beams, shear walls, all structural and non structural concrete elements and steel/metal framing elements, all base building systems, including HVAC, mechanical, electrical and plumbing, building enclosure and the roof deck of such improvements.

**Default Interest Rate:** a per annum rate of interest equal to the rate designated as the "Prime Rate" in the Money Rates table published from time to time in the Eastern Edition of The Wall Street Journal, plus three percent (3%). If more than one prime rate (other than foreign prime rates) is published in the Wall Street Journal for any day, the average of the published prime rates for that day, exclusive of foreign prime rates, shall be used. If such Prime Rate is otherwise unavailable at any time, the Ground Lessor shall select a new index or other measure appropriate as a basis for setting the rate in lieu thereof.

**Demolition Notice:** as defined in Section 6.2.1.



**Development Agreement:** as defined in the Recitals.

**Environmental Laws:** all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders and administrative actions and orders applicable to the Property relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any petroleum, oil and other hydrocarbons, polychlorinated biphenyls, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, infectious waste, lead-based paint or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under any such laws, ordinances or regulations.

**Event of Ground Lessee's Default:** as defined in Section 14.1.

**Event of Ground Lessor's Default:** as defined in Section 14.6.

**Existing Environmental Assessments:** the following assessments performed by WRS Infrastructure & Environment, Inc.: (i) Phase I Environmental Site Assessment for the BOT/Camillus Parcel under WRS Project No. 32-61-070005 dated April 6, 2007; (ii) Limited Phase II Environmental Site Assessment for the Camillus House- BOT Property under WRS Project No. 32-61-070018 dated September 17, 2007; (iii) Additional Limited Phase II Environmental Site Assessment for the Camillus House- BOT Property under WRS Project No. 32-61-070018 dated November 30, 2007; (iv) Phase I Environmental Site Assessment for the FDOT Properties under WRS Project No. 32-61-070005 dated April 6, 2007; (v) Limited Phase II Environmental Site Assessment for the FDOT North and South Halves Property under WRS Project No. 32 61-070018 dated September 17, 2007; (vi) Additional Limited Phase II Environmental Site Assessment for the FDOT North and South Halves Property under WRS Project No. 32-61-070018 dated November 30, 2007; (vii) Phase I Environmental Site Assessment by URS Corporation dated August 16, 2005 for Two Vacant Properties; (viii) Phase I Environmental Site Assessment by ATC Associates, Inc. dated June 13, 2002 for CSX Property; (ix) Limited Phase II Environmental Assessment by ATC Associates Inc. dated December 16, 2002 for CSX Property; (x) Phase I Environmental Site Assessment for 1953 and 1971 N.W. 7th Avenue by CRB Geological & Environmental Services, Inc. dated October 14, 2008; (xi) Phase II Environmental Site Assessment for 1953 and 1971 N.W. 7th Avenue under CRB Project No. 950 08; (xii) Phase I Environmental Site Assessment for the former Shell Station by CRB Geological & Environmental Services, Inc. dated July 7, 2008; (xiii) Phase II Environmental Site Assessment for the former Shell Station under CRB Project No. 950-05; (xiv) environmental site assessment report titled "Due Diligence Report" dated May, 2007, and conducted by Groundwater & Environmental Services, Inc.; (xv) Application for Site Remediation Funding Allocation Agreement as submitted by Motiva to FL Department of Environmental Protection, dated October 4, 2006; (xvi) environmental site assessment report title "Limited Contamination Assessment Addendum with Cost Share Proposal", dated April 8, 2008, and conducted by Groundwater & Environmental Services, Inc.; (xvii) Environmental Assessment Report and Recommendations for further action by Hydrologic Associates USA, Inc. dated October 2, 2008; (xviii) Report of Supplemental Investigation by Hydrologic Associates USA, Inc. dated January 19, 2009; (xix) Report of Supplemental Investigation Addendum by Hydrologic Associates USA, Inc. dated May 4, 2009; (xx) Additional



Groundwater Assessment Report by Hydrologic Associates USA, Inc. dated June 5, 2009; (xxi) Site Redevelopment Plan by Hydrologic Associates USA, Inc. dated June 8, 2009; (xxii) Response to DERM June 16, 2009 by Hydrologic Associates USA, Inc. dated August 19, 2009; (xxiii) Response to Review Comments pertaining to contamination assessment (DEP) by Hydrologic Associates USA, Inc. dated August 20, 2009; (xxiv) Response to RFI (DEP) by Hydrologic Associates USA, Inc. dated October 28, 2009; (xxv) Derived Waste Management Plan (DEP) by Hydrologic Associates USA, Inc. dated December 11, 2009; (xxvi) Interim Soil Management Plan (DERM) by Hydrologic Associates USA, Inc. dated December 21, 2009; (xxvii) Soil Management Plan to DERM by Hydrologic Associates USA, Inc. dated December 29, 2009; (xxviii) Approval letter by FDEP regarding installation of drainage wells dated December 2, 2009; (xxix) Waste Management Plan by FDEP dated January 8, 2010; and (xxx) Conditional Soil Management Plan Approval Letter by DERM dated February 4, 2010.

**Existing Environmental Conditions:** the existing environmental conditions at the Property as more particularly identified in the Existing Environmental Assessments, including without limitation, that certain arsenic and lead soil contamination, and TRHP concentrations above the FDEP commercial/industrial SCTL of 2,7000.0mg/kg.

**Expansion:** that portion of the Building to be constructed on the Expansion Land.

**Expansion Land:** that parcel of land legally described on Exhibit H attached hereto.

**Expiration Date:** as defined in Section 3.1.1.

**Extension Fee:** as such term is defined in the Development Agreement.

**Factor:** as defined in Section 4.1.3.

**Fee Estate:** collectively, (i) all right, title and interest of Ground Lessor in, to and under this Lease and (ii) all right, title and interest of Ground Lessor in, to and under the Property and Improvements.

**Fee Initial Offer:** as defined in Section 17.1.

**Fee ROFO Notice:** as defined in Section 17.1.

**Fee ROFO Period:** as defined in Section 17.2.

**Fee ROFO Price:** as defined in Section 17.1.

**Final Completion:** with respect to any improvements, the stage of completion of such improvements where (i) all necessary final and unconditional certificates of completion and occupancy shall have been issued by appropriate Governmental Authorities for the Core and Shell of such improvements; (ii) the Project Architect shall have issued an AIA form certificate of substantial completion for such improvements; (iii) full and final lien releases shall have been received with respect to such improvements from all contractors, subcontractors and any other parties that have served notices to owner under the Lien Law, and the Project shall be free and clear of all construction liens and claims of lien for labor, materials or services; and (iv) the



general contractor shall have executed a final affidavit with respect to such improvements in accordance with the Lien Law.

**Final Construction Documents:** as defined in the Development Agreement.

**Final Developer Approvals:** as defined in the Development Agreement.

**Final University Approvals:** as defined in the Development Agreement.

**Fixed Land Base Rent:** as defined in Section 4.1.1.

**Force Majeure Event:** an act of God or nature, an act of terrorism or war, suspension of government operations, extraordinary closure of government offices, general moratoria on development of the Property and other properties in the vicinity of the Property, delays of any Governmental Authority in the processing of permits, licenses, approvals and hearings, strikes, civil disturbance, labor troubles or any other cause that is not within the reasonable control of Ground Lessee, specifically excluding delays due to shortage or unavailability of funds or financial condition.

**Governmental Authority:** the federal or any state, county, city or other local government or quasi-governmental authority or utility provider, including any agency, bureau, department or subdivision thereof, or independent commission or authority constituted thereby.

**Granted Easement Beneficiaries:** as defined in Section 2.3.

**Ground Lessee Indemnitees:** Ground Lessee and its trustees, officers, directors, shareholders, employees, partners, members, subsidiaries and Affiliates, and their respective successors and assigns.

**Ground Lessee Minimum Return Condition:** as of any date, the determination that the sum of (i) the cumulative Net Parking Area Revenues, plus (ii) the cumulative Net Proceeds through such date, is at least equal to the Ground Lessee Parking Development Costs through such date.

**Ground Lessee Parking Development Costs:** as of any date, the cumulative amount of (i) all actual, reasonable, third-party "soft costs" of development of the Parking Area improvements to the extent not included in clause (ii) below including, without limitation, all costs of all permits and approvals and the fees and expenses of all design professionals and consultants; and (ii) the costs and expenses to construct and achieve Final Completion of the Parking Area improvements (including, without limitation, all "hard costs") through such date.

**Ground Lessee Response:** as defined in Section 17.2.

**Ground Lessor Change in Use Election Notice:** as defined in Section 5.1.3.

**Ground Lessor Delay:** any failure by Ground Lessor to perform those obligations expressly set forth in this Lease within the time periods expressly set forth in this Lease, or any intentional act by Ground Lessor, other than the performance of an obligation expressly set forth



in this Lease, which failure or act interferes with or delay's Ground Lessee's ability to perform its obligations under this Lease.

**Ground Lessor Indemnitees:** Ground Lessor and its trustees, officers, directors, shareholders, employees, partners, members, contractors, agents, mortgagees, subsidiaries and Affiliates, and their respective successors and assigns.

**Ground Lessor Response:** as defined in Section 16.2.

**Guarantor:** shall mean individually and collectively as the context may require Redwood, Wexford Equities and Wexford S&T.

**Guaranty:** the Amended and Restated Guaranty executed by Wexford Equities and Wexford S&T in favor of Ground Lessor, dated as of April 6, 2009, as the same has been ratified, confirmed and amended by Wexford Equities' and Wexford S&T's joinder to the Development Agreement.

**Hazardous Substance:** any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" as described or defined under Environmental Laws.

**Health District:** shall mean the "Health District," as defined by the SD-10 zoning classification of City of Miami zoning ordinance 11,000 or the CI-HD district in the Miami 21 zoning ordinance.

**Impositions:** as defined in Section 7.1.

**Improvements:** collectively, the Initial Improvements, any Replacement Improvements and any improvements constructed from time to time within the Parking Area.

**Initial Improvements:** as defined in the Development Agreement.

**Institutional Lender:** a bank, savings and loan association, insurance company, trust company, mortgage company, pension fund, or other entity regularly engaged in the business of making loans secured by real property, and with a combined capital and surplus of not less than Five Hundred Million Dollars (\$500,000,000.00).

**Intended Uses:** Those uses which promote, encourage and stimulate medical educational programs of the University through translational research that is academically related or ancillary to the academic function of the University, including research in the natural, social and biological sciences, and including provision for offices, retail space and other facilities incidental or ancillary to such University activities, but excluding Cancer Clinical Care.

**Joinder:** the joinder attached hereto and executed by the Guarantors.

**Land:** collectively, the Tower Land and the Expansion Land.

**Land Base Rent:** as defined in Section 4.1, and which shall include Fixed Land Base Rent and Variable Land Base Rent.



**Land Use Approvals:** The Final University Approvals together with the Final Developer Approvals.

**Lease Year:** each successive twelve (12) month period commencing on the Original Commencement Date and each anniversary thereof during the Term, except that (i) if the Original Commencement Date is not on the first day of a month, then the first Lease Year shall include the remainder of the month in which the Original Commencement Date occurs and the second Lease Year and each Lease Year thereafter shall commence on the anniversary of the first day of the month following the month in which the Original Commencement Date occurs and (ii) in the event of the termination of this Lease on any day other than the last day of a Lease Year, then the last Lease Year shall be the period from the end of the preceding Lease Year to such date of termination.

**Leasehold Estate:** collectively, (i) all right, title and interest of Ground Lessee in, to and under this Lease and (ii) all right, title and interest of Ground Lessee in, to and under the Property and Improvements.

**Leasehold Mortgage:** a Mortgage encumbering all or any portion of the Leasehold Estate.

**Leasehold Mortgagee:** the Mortgagee under a Leasehold Mortgage.

**Leasehold Initial Offer:** as defined in Section 16.1.

**Leasehold ROFO Notice:** as defined in Section 16.1.

**Leasehold ROFO Period:** as defined in Section 16.2.

**Leasehold ROFO Price:** as defined in Section 16.1.

**Leasing Guidelines:** as defined in Section 12.4.3.

**LEED Rating System:** the LEED for Core & Shell Green Building Rating System Version 2.0, or substantially equivalent replacement LEED rating system as may be in effect at the time the applicable Improvements are registered with the USGBC.

**Legal Requirements:** any federal, state, local or foreign law, common law, statute, ordinance, executive order, rule, regulation, order, judgment, administrative order, decree, directive, administrative or judicial decision and any other executive, legislative, regulatory or administrative proclamation.

**Liability Cap:** for that period of time commencing on the date of this Lease and ending on the date of Construction Commencement, an amount equal to the aggregate amount of Base Rent for the period commencing on the Rent Commencement Date and ending on the date that is twelve (12) months after the Rent Commencement Date, and commencing on the date of Construction Commencement and thereafter, an amount equal to Five Million and no/100 Dollars (\$5,000,00.00), but subject to the limitations set forth in Section 14.8.



**Lien Law:** Florida Statutes Chapter 713 Part I (2007), or any successor statutes.

**MAMCO:** Miami Asset Management Company, Incorporated, a Florida corporation.

**Material Alterations:** any alteration that (i) increases the gross square footage of the Building by ten percent (10%) or more over the aggregate gross square feet contained or to be contained in Building as set forth in the Final Construction Documents; (ii) reduces the gross square footage of the Building by ten percent (10%) or more of the aggregate gross square feet contained or to be contained in Building as set forth in the Final Construction Documents; (iii) adds or removes a floor of the Building; (iv) materially alters the exterior appearance of the Building from that shown on the Final Construction Documents; (v) changes the character of the Building and renders it incompatible for the Intended Uses; (vi) changes the size of either the Bio-Technology Suites or the Soft Landing Area such that the aggregate size of the Bio-Technology Suites and the Soft Landing Area is less than 25,000 rentable square feet; (vii) includes any alterations to the ground floor lobby area of the Building; (viii) costs more than Five Million Dollars (\$5,000,000) when aggregated with all related alterations made during any twelve (12) month period; (ix) removes any columns, support structures, roofs or exterior walls from or of the Building that any improvements existing from time to time within the Air Parcel abut or are attached; or (x) removes any columns, support structures, roofs or exterior walls from or of the Building that any improvements existing from time to time within other portions of the Surrounding Area abut or are attached or are anticipated to abut or be attached (provided such abutting and/or attached improvements were approved by Ground Lessee prior to their initial construction), but Material Alterations shall specifically exclude (a) any alterations to the interior of the Building (other than alterations to the ground floor lobby area of the Building) including, without limitation, subtenant improvements, and (b) maintenance, repairs and replacements in the ordinary course.

**Memorandum of Lease:** as defined in Section 19.10.

**Mortgage:** a deed of trust, mortgage or similar security instrument.

**Mortgagee:** the holder of a Mortgage.

**Net Proceeds:** the net amount remaining from the gross proceeds (including all receipts, income and financial accessions of any kind, whether cash or in-kind, and including set-off rights, credits or similar receipts or entitlements) arising from a Transfer of the Parking Area improvements in excess of the sum of the following items: (i) the amount paid by the Ground Lessee from such proceeds on any Leasehold Mortgage or other indebtedness that has been incurred by Ground Lessee for the purpose of developing, constructing, owning or operating the Parking Area improvements; and (ii) all reasonable, actual and customary costs of such transaction paid by Ground Lessee directly related to the Transfer.

**Net Parking Area Revenues:** for any period, an amount equal to the positive difference, if any, between (i) the sum of Parking Area Gross Revenues and Net Proceeds and (ii) Parking Area Expenses.

**New Development:** the development and construction of any improvement in the Surrounding Area or the Parking Area.



**Non-Disturbance Agreement:** as defined in Section 12.5.3.

**Original Commencement Date:** April 16, 2009.

**Original Property:** the Tower Land, the Access Drive and the portion of the Parking Area described in Exhibit B hereto as the "Parcel 1".

**Outside Completion Date:** six (6) months after the Projected Completion Date.

**Parking Agreement:** that certain Relocated Parking Agreement between Owner and Wexford S&T dated as of April 16, 2009, as amended by that certain First Amendment to Relocated Parking Agreement of even date herewith, as the same may hereafter be amended or modified from time to time.

**Parking Area:** The parcel of land legally described on Exhibit B attached hereto, together with any portion of the Improvements constructed thereon from time to time.

**Parking Area Base Rent:** as defined in Section 4.1.

**Parking Area Expenses:** for any period, all reasonable costs and expenses actually expended by Ground Lessee in the operation and management of the Parking Area and any improvements thereon including, without limitation, (i) costs of cleaning, security, janitorial service, rubbish removal, heating, electricity, air conditioning, utilities, tempered water and water for lavatory use, maintenance and repairs, maintenance of the grounds and window cleaning, (ii) service contracts or other agreements with independent contractors for any of the foregoing, (iii) management and/or operator fees, (iv) such portion directly attributable solely to the Parking Area and the improvements thereon of any wages, salaries, benefits, payroll taxes and unemployment compensation insurance for employees of Ground Lessee or any contractor of Ground Lessee engaged in the cleaning, operating, maintenance or security of the Parking Area and the improvements thereon, (v) the cost (or portion thereof directly attributable solely to the Parking Area and the improvements thereon) of all insurance including, without limitation, casualty, liability and loss of rent insurance, (vi) an allowance for depreciation over the useful life (as reasonably determined by Ground Lessee) of any items or improvements properly chargeable to the capital account, (vii) payments to any Governmental Authority including, but not limited to, water and sewer charges, (viii) fees and charges of any association or special district affecting the Property allocable to the Parking Area and the improvements thereon, (ix) real estate taxes allocable to the Parking Area and the improvements thereon, (x) use, occupancy and/or parking taxes, and any surcharges, fees and assessments charged by any Governmental Authority and (xi) supplies. The term "Parking Area Expenses" shall not include: (a) repairs or other work (including rebuilding) occasioned by fire, windstorm or other casualty or condemnation to the extent covered by Ground Lessee's insurance or should be covered if Ground Lessee maintains the insurance it is required to maintain under this Lease, (b) interest on and amortization of debt, (c) interest and penalties for late payment of taxes, (d) wages or salaries of employees over the rank of property manager, (e) expenses resulting from any violation by Ground Lessee of the terms of any Qualifying Mortgage which, under this Lease, are the responsibility of Ground Lessee, (f) fees and costs of vendors providing services to or supplies for the Parking Area for Ground Lessee materially in excess of rates then customarily



charged by vendors for the same services or supplies to comparable parking facilities in the area, and (g) any item for which reimbursement is actually made to Ground Lessee from another source (e.g., insurance proceeds).

**Parking Area Gross Revenues:** for any period, all revenue (including all receipts, income and financial accessions of any kind, whether cash or in-kind, and including set-off rights, credits or similar receipts or entitlements) derived, directly or indirectly, from the Parking Area or any portion thereof that have been paid to, or applied for the benefit of, any of the following: (i) the Ground Lessee, (ii) any Affiliate of the Ground Lessee, (iii) any creditor, claimant, employee or agent of the Ground Lessee or any of its Affiliates, or any other Person if the payment relates to the Parking Area or any portion thereof or it relates to any obligations to such Person arising from the Parking Area or any portion thereof, or (iv) any other Person if such payment represents such revenue that would otherwise have been received by a Person identified in clauses (i) through (iii), but for the direction by such Person (or a court or administrative order, or similar directive) to apply the revenue payment to such other Person. Without limiting the foregoing, revenues from the Parking Area shall include: (a) revenues related to preceding periods which were not collected until the period in question (and therefore were not previously included in Parking Area Gross Revenues), including payments on account of judgments or other awards in legal proceedings relating to foregone or uncollected revenues or the right to collect same; (b) rent, royalties, license payments, valet fees or other remuneration of any nature (including base rent, percentage rent and other additional rent) paid to or for the benefit of any Persons identified in clauses (i) through (iv) and relating to the Parking Area or any portion thereof; (c) fees paid to any Persons identified in clauses (i) through (iv) for any and all services and activities provided to Persons using the Parking Area or any portion thereof; (d) proceeds from any business interruption or other loss of income insurance; (e) distributions, dividends or other payments from any venture, partnership or similar enterprise relating to the use of the Parking Area or any portion thereof; and (f) any portion of sub-tenant or licensee rents, fees or other payments attributable to such sub-tenant's or licensee's use of the Parking Area. For purposes of this definition only, "Affiliate" shall also include any venture, partnership, limited liability company, trust, corporation or other business entity having the right to use any portion of the Parking Area or any portion thereof and in which the Ground Lessee (or any Affiliate of Ground Lessee) has, directly or indirectly, any ownership or economic interest of any kind.

**Parking Relocation Notice:** as defined in Section 2.5.1.

**Parking Termination Notice:** as defined in Section 2.6.

**Permitted Exceptions:** as defined in Section 2.2.

**Permitted Transfer:** as defined in Section 12.2.

**Permitted Uses:** the Intended Uses and any general offices uses as may be permitted pursuant to Section 5.1 of this Lease.

**Person:** any individual, association of individuals, entity or Governmental Authority.

**Pre-Construction Default:** as defined in Section 14.2.1.



**Pre-Construction Liquidated Damages Amount:** as defined in the Development Agreement.

**Project:** the Property and the Improvements.

**Project Architect:** as defined in the Development Agreement.

**Projected Completion Date:** twenty-one (21) months after the issuance of the construction permit for vertical construction of the Tower Building.

**Project Plan:** the general plan for the development, improvement and use of the Property attached as Exhibit C.

**Property:** collectively, the Additional Property and the Original Property.

**Qualified Transferee:** Any (a) Affiliate of Wexford Equities and/or Wexford S&T, the membership or other equity interests of which are at least fifty percent (50%) owned by Wexford Equities and/or Wexford S&T, directly or indirectly or (b) commercial real estate investor, owner, owner occupant or developer who (i) has a net worth equal to or greater than Thirty-Five Million and No/100 Dollars (\$35,000,000), (ii) owns, manages or is developing or, within the preceding five (5) years, has owned, managed or developed at least one million square feet of commercial space substantially similar to the Improvements in quality, character, and use, and (iii) is not then a party to any litigation with Ground Lessor or any Affiliate of Ground Lessor.

**Qualifying Mortgage:** a Leasehold Mortgage that (a) is held by a Qualified Transferee or (b) is held by an Institutional Lender that is not an Affiliate of Ground Lessee and (i) is a lien on the Leasehold Estate, (ii) secures the repayment of sums borrowed by Ground Lessee, (iii) secures a loan that by its terms is required to be paid in full no later than the Expiration Date, and (iv) has been registered with Ground Lessor pursuant to Section 13.5.

**Qualifying Mortgagee:** the Mortgagee under a Qualifying Mortgage.

**Qualifying Sublease:** as defined in Section 12.4.1.

**Qualifying Subtenant:** any subtenant under a Qualifying Sublease.

**Recapture Option:** Landlord's option to recapture the Recapture Parcel pursuant to Section 2.5.7.

**Recapture Parcel:** (i) with respect to the original Parking Area, the portion of the Parking Area designated as "Parcel 3" on Exhibit B hereto, or (ii) with respect to a Relocated Parking Area, that portion of the Relocated Parking Area designated as the "Recapture Parcel" in accordance with Section 2.5.1.

**Redwood:** Redwood Capital Investments, LLC, a Maryland limited liability company.



**Redwood Completion Guaranty:** that certain Completion Guaranty executed by Redwood in favor of Ground Lessor, dated as of April 16, 2009, as the same has been ratified, confirmed and amended pursuant to the Joinder.

**Relocated Parking Area:** as defined in Section 2.5.1.

**Rent:** collectively, Base Rent and Additional Rent.

**Rent Commencement Date:** the date that a temporary certificate of occupancy is issued for the Core and Shell of any portion of the Building.

**Rent Payment Date:** the Rent Commencement Date and every one (1) month thereafter; provided that if the Rent Commencement Date is not on the first day of a month, then the first Rent Payment Date shall be on the first day of the month following the Rent Commencement Date and each Rent Payment Date thereafter shall be on the first day of each succeeding month throughout the Term.

**Repair Work:** as defined in Section 9.3.

**Replacement Improvements:** as defined in Section 6.2.1.

**Required Number of Parking Spaces:** if Ground Lessor has previously exercised the Recapture Option, the "Required Number of Parking Spaces" shall be the number of parking spaces necessary for the Building to be in compliance with Legal Requirements. If Ground Lessor has not exercised the Recapture Option, the "Required Number of Parking Spaces" shall be four hundred thirteen (413).

**Reserved Easement Beneficiaries:** as defined in Section 2.4.

**Security Deposit:** as defined in Section 4.10.

**Signage:** as defined in Section 6.2.3.

**Site Redevelopment Plan:** as defined in the Development Agreement.

**Soft Landing Area:** speculative wet lab space in flexible configurations to house the soft landing and technology suite functions, the area of which, when aggregated with the area of the Bio Technology Suites, shall not be less than 25,000 rentable square feet.

**Space Lease:** a lease agreement to be entered into between Ground Lessee, as landlord, and the University, as tenant, pursuant to which the University shall lease approximately 80,000 square feet of space in the Building.

**Stabilization:** the date when the Initial Improvements are subject to Qualifying Subleases for at least eighty-five percent (85%) of the rentable square footage of the Initial Improvements.



**Substantial Completion:** with respect to any improvements, the stage of completion of such improvements where (i) all of such improvements, excepting only minor punchlist items (if any) that do not interfere with the use of such improvements, shall have been substantially completed (a) in a good and workmanlike manner, (b) free of any defects, (c) in accordance with all applicable governmental requirements, (d) with respect to the Initial Improvements, in accordance with the Final Construction Documents and the Land Use Approvals and (e) with respect to any and all improvements other than the Initial Improvements, in accordance with such plans and specifications as may be approved by Ground Lessor in accordance with this Lease (to the extent that such approval is required hereunder), (ii) temporary certificate of completion or occupancy (or equivalent) for the Core and Shell of such improvements, and other applicable inspections and approvals for such improvements shall have been issued by appropriate Governmental Authorities and (iii) the architect of record shall have issued an AIA form certificate of substantial completion with respect to such improvements.

**Succession Date:** as defined in Section 12.5.2.4.

**Surrounding Area:** the real property described in Exhibit E attached hereto less and except the Property. On the date Ground Lessor acquires fee title to any additional land within the parcel bordered by N.W. 20th Street on the north, N.W. 17th Street on the south, Interstate 95 on the east and N.W. 7th Avenue on the west, or on the date that any part of the Property is released from this Ground Lease such additional and/or released land shall automatically be included within the definition of "Surrounding Area." Although the parties intend this provision to be self-executing, Ground Lessor and Ground Lessee shall enter into an amendment of this Lease to amend the definition of "Surrounding Area" to include any such additional and/or released land.

**Taxes:** as defined in Section 4.4.

**Tax Parcel:** as defined in Section 4.4.

**Taxable Area:** as defined in Section 7.1.

**Term:** as defined in Section 3.1.1.

**Termination Notice:** as defined in Section 6.2.1.

**Tower Building:** that portion of the Building to be constructed on the Tower Land.

**Tower Land:** that parcel of land legally described on Exhibit D attached hereto.

**Transfer:** any (i) sale, assignment, subletting, exchange, hypothecation, transfer or other disposition of the Leasehold Estate, in whole or in part, whether voluntarily or involuntarily, by court or government agency order or other operation of law, or otherwise; provided however, the filing of involuntary liens shall not be deemed a hypothecation or transfer for purposes of this definition, (ii) Change of Control, (iii) assignment, transfer or disposition of more than 50% in the aggregate of the membership or any other equity interests in Ground Lessee, including any such transaction in connection with any conversion, merger, consolidation or other reorganization, or (iv) the refinancing of all or any part of the Leasehold Estate.



**University:** the University of Miami, a Florida non-profit corporation.

**USGBC:** as defined in Section 6.1.

**Variable Land Base Rent:** as defined in Section 4.1.1.

**Wexford Completion Guaranty:** that certain Completion Guaranty executed by Wexford Equities and Wexford S&T in favor of Ground Lessor, dated as of April 16, 2009, as the same has been ratified, confirmed and amended pursuant to the Joinder.

**Wexford Equities:** Wexford Equities, LLC, a Maryland limited liability company.

**Wexford S&T:** Wexford Science & Technology, LLC, a Maryland limited liability company.

**1.2 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Florida (without reference to conflicts of laws principles).

**1.3 Captions, Numberings and Headings.** Captions, numberings and headings of Articles, Sections and Exhibits in this Lease are for convenience of reference only and shall not be considered in the interpretation of this Lease.

**1.4 Number; Gender.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**1.5 Business Day.** If the date for performance of any obligation under this Lease falls on other than a business day, then such obligation shall be performed on the next succeeding business day, and "business day" shall mean any day other than a Saturday, Sunday or any other day on which federal government offices in Miami, Florida are closed.

**1.6 Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**1.7 Severability.** If one or more of the provisions of this Lease shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Lease shall continue in full force and effect.

**1.8 No Oral Modifications or Waivers.** No modification of this Lease shall be valid or effective unless the same is in writing and signed by Ground Lessor and Ground Lessee. No purported waiver of any of the provisions of this Lease shall be valid or effective unless the same is in writing and signed by the party against whom it is sought to be enforced.

**1.9 Schedule and Exhibits.** All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease.

**1.10 Including.** The word "including," and variations thereof, shall mean "including without limitation."



**1.11 Integration.** This Lease, all Schedules and Exhibits appended to this Lease, the Development Agreement, the Guaranty and the Completion Guaranties contain the entire understanding among Ground Lessor, Ground Lessee and Guarantor with respect to the development and ground leasing of the Property, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, among Ground Lessor, Ground Lessee and any Guarantor with respect to the development and ground leasing of the Property other than as are expressly set forth in this Lease, the Schedules and Exhibits appended to this Lease, the Development Agreement, the Guaranty and the Completion Guaranties.

**1.12 No Construction Against Drafter.** This Lease has been negotiated and prepared by Ground Lessor and Ground Lessee and their respective attorneys and, should any provision of this Lease require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

## **2. GRANT; PROPERTY; PARKING AREA; RECIPROCAL EASEMENT AGREEMENT**

**2.1 Demise of Property.** In consideration of the rents and covenants set forth in this Lease on the part of Ground Lessee to be paid and performed, Ground Lessor hereby leases to Ground Lessee, and Ground Lessee hereby accepts and leases from Ground Lessor, the Property upon and subject to the terms and provisions of this Lease. Given that certain portions of the Initial Improvements are intended to be constructed to the boundary lines of the Land, all as shall be reflected in the Final Construction Documents, Ground Lessee, at its sole cost and expense, shall obtain after Substantial Completion of all of the Initial Improvements a final "as-built" survey of the Property by a surveyor reasonably acceptable to Ground Lessee, certified to Ground Lessor and Ground Lessee, and sufficient to satisfy minimum technical standards as required by Section 472.027 Florida Statutes. If such survey reflects that such portions of the Initial Improvements encroach over the boundary lines of the Land, or that such portions of the Initial Improvements are not constructed to the boundary lines of the Land, then Ground Lessor and Ground Lessee shall execute an amendment to this Lease and to any memorandum of this Lease that appropriately amends the legal description of the Land to conform to the actual, as-built boundary lines of such portions of the Initial Improvements.

**2.2 Limitations.** The demise of the Leasehold Estate is subject to the following (all of the following are the "Permitted Exceptions"):

**2.2.1** With respect to the Original Property, real estate taxes accruing from and after the Original Commencement Date, not yet due and payable;

**2.2.2** With respect to the Additional Property, real estate taxes accruing from and after the Additional Land Commencement Date, not yet due and payable;



2.2.3 any state of facts an accurate survey and an inspection of the Property would disclose;

2.2.4 applicable zoning and building restrictions and regulations, including without limitation the Land Use Approvals;

2.2.5 the matters set forth in Schedule 2.2.5 attached hereto;

2.2.6 all title exceptions shown in Schedule B-I of the final title policy issued to Ground Lessee insuring the Leasehold Estate;

2.2.7 any documents required in order to obtain or in connection with the Land Use Approvals; and

2.2.8 Ground Lessor's reversionary interest in the Property, Improvements and Leasehold Estate upon expiration or earlier termination of the Term.

2.3 **Intentionally Deleted.**

2.4 **Intentionally Deleted**

2.5 **Parking Area – Relocation.**

2.5.1 In the event that the Ground Lessor, in its sole and absolute discretion: (a) enters into an agreement with a third-party developer for such developer to develop and construct a New Development within the Parking Area or any portion thereof, (b) elects to develop and construct a New Development within the Parking Area or any portion thereof, or (c) elects to sell all or a portion of the Parking Area, Ground Lessor at its sole discretion shall be entitled to cause Ground Lessee to relocate from the Parking Area to another area, which may include all or a portion of the Surrounding Area and/or the original Parking Area as herein defined, with the exact location and configuration to be determined by Ground Lessor (provided that such location is properly zoned to permit the Required Number of Parking Spaces of size and character substantially similar to the parking spaces located on the original Parking Area, is free of Hazardous Substances except for the Existing Environmental Conditions, which will be addressed pursuant to 3.6 of the Parking Agreement, is suitable for development or construction of surface or structured parking, as the case may be, with respect to geotechnical considerations, topography and other similar site conditions and Ground Lessor has good, marketable and insurable title (at regular rates) thereto free and clear of all due and unpaid taxes, assessments, liens and encumbrances except Permitted Exceptions, matters caused by Ground Lessee or any of its Affiliates and those easements or restrictions disclosed in a title report reasonably agreed to by Ground Lessee) (a "**Relocated Parking Area**"). Ground Lessor may exercise its rights under this Section 2.5.1 at any time and from time to time during the Term (as long as the Parking Agreement has not been terminated) by written notice to Ground Lessee and Wexford S&T (each, a "**Parking Relocation Notice**"), which Parking Relocation Notice shall specify (i) the effective date of such relocation (which date cannot be less than one hundred eighty (180) days after the date Ground Lessee receives the Parking Relocation Notice) (the "**Relocation Effective Date**"), (ii) the location of the Relocated Parking Area, (iii) that portion of the Parking Area (or previous Relocated Parking Area, as applicable) that is to be released from this Lease and the



Memorandum of Lease on the Relocation Effective Date (the "Released Parking Area"), (iv) whether Ground Lessor elects for the Relocated Parking Area to be improved with structured parking facilities, (v) if the Relocated Parking Area will be improved with surface (and not structured) parking facilities and Ground Lessor has not previously exercised the Recapture Option, the location and configuration of the Recapture Parcel, which Recapture Parcel shall (I) be of a size sufficient to permit construction of one hundred sixteen (116) parking spaces of size and character substantially similar to the parking spaces located on the original Parking Area, (II) consist of one (1) parcel of land, and (III) have a location and configuration that permits the Recapture Parcel to be severed from the balance of the Relocated Parking Area without adversely affecting the use and marketability of the balance of the Relocated Parking Area, and (vi) the form of Ground Lessee's (or if structured parking facilities are to be constructed, Wexford S&T's (or its designee's)) interest in the Relocated Parking Area as described in Section 2.5.5. Ground Lessor may exercise its rights under this Section 2.5.1 up to two (2) times during the Term (as long as the Parking Agreement has not been terminated) with respect to relocations for which Ground Lessor does not require construction of structured parking improvements within a Relocated Parking Area and one (1) time during the Term (as long as the Parking Agreement has not been terminated) with respect to relocations for which Ground Lessor requires construction of structured parking improvements. Notwithstanding any provision contained in this Lease, Ground Lessor acknowledges and agrees that Ground Lessee shall not have any obligation hereunder to construct and/or to pay for the costs and expenses to construct any Relocated Parking Area or any structures or improvements located thereon (including, without limitation, any structured parking facility).

2.5.2 Each Relocated Parking Area shall be sufficient in size to permit construction of the Required Number of Parking Spaces of size and character substantially similar to the parking spaces located on the original Parking Area. The improvements may include structured parking in Ground Lessor's sole and absolute discretion, which structured parking will be developed in accordance with the terms and conditions of the Parking Agreement. In the event that the Relocated Parking Area is comprised of surface parking and is added to and governed by this Lease, then the provisions of Article VI of this Lease shall apply with respect to any alterations or demolition of the improvements to be constructed within such Relocated Parking Area as if such improvements were included within the definition of "Initial Improvements," except that in addition to the grounds upon which Ground Lessor may object to plans as set forth in Section 6.2.4, Ground Lessor shall have right to object to the plans to the extent they include a reduction in the number of parking spaces below the Required Number of Parking Spaces.

2.5.3 Commencing on the Relocation Effective Date, Ground Lessee shall have an easement to use the original Parking Area (or previous Relocated Parking Area, as applicable) to the extent necessary to provide the Required Number of Parking Spaces pending completion of the improvements to the applicable Relocated Parking Area, which easement shall be recorded and made subject to the lien of any Qualifying Mortgage, if requested by the Qualifying Mortgagee, and shall terminate on the date on which the applicable Relocated Parking Area has been improved to the extent necessary to provide the Required Number of Parking Spaces and Ground Lessee has the right to use such Relocated Parking Area in accordance with Section 2.5.5 below.



2.5.4 On the Relocation Effective Date, the Released Parking Area shall be deemed released from this Lease and the Memorandum of Lease and subject to any easement set forth in Section 2.5.3 above, all right, title and interest of Ground Lessee hereunder with respect to such Released Parking Area shall expire and Ground Lessee shall surrender to Ground Lessor possession of such Released Parking Area and, if Ground Lessee elects to do so in its sole discretion, any Improvements thereon. Although the parties intend this provision to be self-executing, the parties shall enter into an amendment of this Lease and the Memorandum of Lease to amend the definition of "Parking Area."

2.5.5 Upon the Relocation Effective Date, Ground Lessor, in its sole and absolute discretion, shall cause one of the following to occur: (a) if the Relocated Parking Area consists of surface parking, Ground Lessor (or its designated Affiliate) shall execute and deliver in favor of Ground Lessee an amendment to this Lease adding the Relocated Parking Area, or a new lease for the Relocated Parking Area, or (b) if the Relocated Parking Area consists of structured parking, the developer of the structured parking shall execute and deliver in favor of Ground Lessee a lease, sublease, exclusive easement right, or such other exclusive right as may be reasonably acceptable to Ground Lessee for the use of the structured parking on the Relocated Parking Area.

- (a) If the Relocated Parking Area consists of surface parking, any lease amendment or new lease in favor of Ground Lessee shall: (i) include rental, fee and other economic terms no more burdensome to Ground Lessee than the rental, fee and other economic terms applicable to the Parking Area under this Lease, (ii) benefit from easements and reserve easements as set forth in the REA, (iii) provided that the Parking Agreement remains in effect, include relocation and termination provisions identical to those set forth in this Section 2.5, (iv) otherwise be in form and content consistent with this Lease and reasonably acceptable to Ground Lessee and Ground Lessor, (v) be title insurable, contain, at a minimum, the mortgagee protections contained in this Lease, and expressly not prohibit encumbrance by a Qualifying Mortgage, (vi) if the Relocated Parking Area is added to this Lease by an amendment to this Lease, such Relocated Parking Area shall be subject to all of the terms and conditions of this Lease applicable to the Parking Area (including Section 19.1), and (vii) if the Relocated Parking Area is added under a new lease, have a term not shorter than this Lease and shall terminate upon a termination of this Lease.
- (b) If the Relocated Parking Area consists of structured parking, then any lease, sublease, easement or other right in favor of Ground Lessee for use of the structured parking shall: (i) include a parking fee or parking rent consistent with market rates for parking similar to that provided by the Relocated Parking Area in the Central Business District, (ii) benefit from easements and reserve easements as set forth in the REA, (iii) have a term not shorter than this Lease, (iv) otherwise be in form and content consistent with



this Lease and reasonably acceptable to Ground Lessee and Ground Lessor, and (v) be title insurable, contain, at a minimum, the mortgagee protections contained in this Lease, and expressly not prohibit encumbrance by a Qualifying Mortgage; provided, however, if such lease, sublease, easement or other right in favor of Ground Lessee is granted by Wexford S&T or an Affiliate of Wexford S&T, then the foregoing provisions of this Section 2.5.5.2 shall not be applicable as long as Ground Lessee is then an Affiliate of Wexford S&T.

2.5.6 Except as otherwise expressly set forth in this Section 2.5, any relocation of the Parking Area as set forth in this Section 2.5 shall not terminate or otherwise affect or modify this Lease except that, if the Relocated Parking Area consists of a lease amendment adding surface parking, from and after the Relocation Effective Date, "Parking Area" shall refer to the applicable Relocated Parking Area rather than the original Parking Area (or previous Relocated Parking Area, as applicable).

2.5.7 If (a) the Space Lease terminates in accordance with its terms on account of a default (after the expiration of all applicable notice and cure periods) by the landlord thereunder, and (b) the parking facilities provided in the Parking Area or Relocated Parking Area, as the case may be, consist of surface parking containing 413 parking spaces, then in such event Ground Lessor may, simultaneously with or at any time after such termination of the Space Lease, upon not less than thirty (30) days prior written notice to Ground Lessee, recapture the Recapture Parcel on the date specified in such written notice (the "Recapture Effective Date"), in which event the Recapture Parcel shall be deemed released from this Lease and the Memorandum of Lease, all right, title and interest of Ground Lessee hereunder with respect to such Recapture Parcel shall expire and Ground Lessee shall surrender to Ground Lessor possession of such Recapture Parcel and, if Ground Lessee elects to do so in its sole discretion, any Improvements thereon in their "as is" condition without representation or warranty as to the condition of such Improvements. Although the parties intend this provision to be self-executing, the parties shall enter into an amendment of this Lease and the Memorandum of Lease to amend the definition of "Parking Area." The Recapture Option shall not apply (A) to a termination of the Space Lease for any reason other than a default (after the expiration of all applicable notice and cure periods) on the part of the landlord thereunder, (B) to the expiration of the Space Lease in accordance with its terms, or (C) if all or any part of any structured parking facility constructed in accordance with this Ground Lease or the Parking Agreement is located on the Recapture Parcel or if any structured parking facility has been constructed in accordance with this Ground Lease or the Parking Agreement.

2.6 **REA.** Ground Lessor and Ground Lessee agree to diligently and timely cooperate with one another and to negotiate with one another in good faith to agree upon a mutually acceptable reciprocal easement agreement encumbering the Surrounding Area and the Property (the "**REA**"). The parties agree to complete the REA and to record it against the Surrounding Area and the Property within ten (10) days following the date of this Lease.



### 3. TERM; CONDITION OF PROPERTY

#### 3.1 Term; Financing Contingency.

3.1.1 Ground Lessee shall have and hold the Property for a term (with respect to the Original Property or the Additional Property, as the case may be, the "Term") commencing (a) with respect to the Original Property, the Original Commencement Date, and (b) with respect to the Additional Property, the Additional Land Commencement Date, and ending at midnight on the sixtieth (60th) anniversary of the Rent Commencement Date ("Expiration Date"), unless sooner terminated as set forth in this Lease. Upon determination of the actual Rent Commencement Date and the actual Expiration Date, Ground Lessor and Ground Lessee shall each execute and deliver a letter in the form of Exhibit F attached hereto (the "Commencement Date Letter"). Ground Lessor and Ground Lessee acknowledge and agree that, notwithstanding anything contained herein to the contrary, all of the terms, conditions, representations, warranties and covenants contained herein shall, with respect to each of the Original Property and the Additional Property, be deemed made as of, and shall apply only after, the Commencement Date of the Term hereof with respect to the Original Property and the Additional Property, as the case may be.

3.1.2 Ground Lessor and Ground Lessee acknowledge that the Development Agreement provides for certain termination rights on the part of Ground Lessor and/or Ground Lessee as set forth therein. If for any reason the Development Agreement is terminated by either party as permitted pursuant to the terms of the Development Agreement (including, without limitation, Section 3.1 thereof) then Ground Lessee shall pay Rent through the date of termination of the Development Agreement, this Lease shall terminate as of the date of termination of the Development Agreement and all right, title and interest of Ground Lessee hereunder shall expire, and Ground Lessee shall surrender possession of the Property and any Improvements to Ground Lessor. Nothing in this Section 3.1.2 shall limit or restrict the rights and remedies of either party under the Development Agreement, this Lease, the Guaranty or the Completion Guaranties if the Development Agreement is terminated as the result of an Event of Default (as defined in the Development Agreement) by either party thereunder, and all of such rights and remedies shall survive the termination of this Lease.

3.1.3 If Ground Lessee does not obtain financing for the Project acceptable to Ground Lessee in its sole and absolute discretion by the earlier date to occur of (the "Financing Termination Date"): (A) March 31, 2010, or (B) the execution and delivery by the University (as tenant) and Ground Lessee (as landlord) (as applicable) of the Space Lease, then Ground Lessee may elect to terminate this Lease by sending written notice to Ground Lessor by not later than the Financing Termination Date, in which event this Lease and the Development Agreement shall be of no further force or effect and the parties shall be released from any further obligations or liabilities hereunder and thereunder (other than those that expressly survive termination). If Ground Lessee does not deliver to Ground Lessor a written notice of termination by the Financing Termination Date, then Ground Lessee shall irrevocably be deemed to have waived its right to terminate under this Section 3.1.3. If Ground Lessee does not elect to terminate pursuant to this Section 3.1.3, then the aggregate amount of the Extension Fee (as such term is defined in the Development Agreement) actually paid to Ground Lessor shall be credited against the first installments of Rent until fully expended.



**3.2 Possession.** Ground Lessor delivered possession of the Original Property on the Original Commencement Date, subject to the limitations set forth in Section 2.2. Ground Lessor shall deliver possession of the Additional Property on the Additional Land Commencement Date, subject to the limitations set forth in Section 2.2.

**3.3 As Is, Where Is; Environmental Indemnities.**

3.3.1 Ground Lessor has not made and does not make any representations or warranties as to the physical condition, environmental condition, layout, leases, square footage, rents, income, expenses, operation, zoning or any other matter or thing affecting or relating to the Property except as specifically set forth in this Lease or the Development Agreement, and Ground Lessee is not relying upon any representation or warranty not embodied in this Lease or the Development Agreement. Ground Lessee has had full opportunity to inspect and have inspected the condition, nature, and usability of the Property, including any sub-surface conditions, and the present uses and non-uses thereof, and the zoning and building laws and regulations affecting the Property and, except as otherwise specifically set forth in this Lease or the Development Agreement, Ground Lessee accepts the Property in "as is, where is" condition and "with all faults," without representation or warranty, expressed or implied, in fact or by law, oral or written, by Ground Lessor, including, without limitation, the value, condition, merchantability, habitability, marketability, profitability, suitability or fitness for a particular purpose or use.

3.3.2 Ground Lessor agrees to indemnify, defend and hold harmless Ground Lessee and the Ground Lessee Indemnitees from and against any and all Claims resulting from (i) the Existing Environmental Conditions and (ii) any Hazardous Substances on, in or under the Property caused by the acts of Ground Lessor or any of its trustees, directors, officers, employees, Affiliates, contractors, subcontractors, agents or representatives. In the event that any action or proceeding covered by the indemnity provided in this Section 3.3.2 is brought against any Ground Lessee Indemnitee, Ground Lessor, upon notice from Ground Lessee, shall defend such action or proceeding by counsel selected by Ground Lessee and approved by Ground Lessor in writing within fifteen (15) days of request therefor, but no approval of counsel shall be required where the Claim is defended by counsel of an insurance carrier obligated to defend such Claim. Should any Claim be made against any Ground Lessee Indemnitee or an action or proceeding be brought against it as set forth in this Section 3.3.2, Ground Lessee shall give Ground Lessor prompt written notice thereof so as to enable Ground Lessor to defend such Claim. Provided that Ground Lessor is defending an action or proceeding in accordance with this Section 3.3.2, no Ground Lessee Indemnitee shall enter into any settlement discussions or settlement of such action or proceeding without the approval of Ground Lessor, which approval shall be granted or denied within thirty (30) days of request therefor. Notwithstanding anything contained in this Lease to the contrary, the aggregate dollar amount of any recovery on the indemnity and hold harmless set forth in this Section 3.3.2 shall be limited to the Liability Cap, and prior to seeking recovery against Ground Lessor, Ground Lessee shall seek and pursue recovery against any available insurance policy with respect to the matters for which the indemnity and hold harmless set forth in this Section 3.3.2 apply.

3.3.3 Ground Lessee agrees that during the Term (i) Ground Lessee will not make, store, release, treat or dispose of any Hazardous Substances on, about, or under the Project



or any part thereof in violation of any Environmental Laws and (ii) Ground Lessee shall not permit any subtenant or any other occupant of the Project or any part thereof to make, store, release, treat or dispose of any Hazardous Substances on, about, or under the Project or any portion thereof in violation of any Environmental Laws. Ground Lessee agrees to indemnify, defend and hold harmless Ground Lessor Indemnitees from and against any and all third party Claims resulting from any Hazardous Substances on, in or under the Property caused by the acts of Ground Lessee, any Guarantor, any tenants, any subtenants or any of their respective directors, officers, members, managers, partners, shareholders, employees, Affiliates, contractors, subcontractors, agents, representatives, tenants, subtenants, guests, licensees, invitees or other occupants. In the event that any action or proceeding covered by the indemnity provided in this Section 3.3.3 is brought against any Ground Lessor Indemnitee, Ground Lessee, upon notice from Ground Lessor, shall defend such action or proceeding by counsel approved by Ground Lessor in writing, which approval shall be granted or denied within fifteen (15) days of request therefor, but no approval of counsel shall be required where the Claim is defended by counsel of an insurance carrier obligated to defend such Claim. Should any Claim be made against Ground Lessor or an action or proceeding be brought against it as set forth in this Section 3.3.3, Ground Lessor shall give Ground Lessee prompt written notice thereof so as to enable Ground Lessee to defend such Claim. Provided that Ground Lessee is defending an action or proceeding in accordance with this Section 3.3.3, Ground Lessor shall not enter into any settlement of such action or proceeding without the approval of Ground Lessee.

#### 4. RENT

4.1 **Base Rent.** Ground Lessee shall pay to Ground Lessor base rent for the Land (the "Land Base Rent"), which is comprised of Fixed Land Base Rent and Variable Land Base Rent, and base rent for the Parking Area (the "Parking Area Base Rent"), as follows:

4.1.1 Ground Lessee shall pay an aggregate amount of \$867,420.00 as fixed land base rent (the "Fixed Land Base Rent"). Prior to the date hereof, Ground Lessee has paid Fixed Land Base Rent in the amount of \$623,925.00. Payments of the remaining portion of Fixed Land Base Rent shall be payable in monthly installments of \$34,785.00 commencing on March 1, 2010 and on the first day of each successive month thereafter until September 30, 2010.

4.1.2 Ground Lessee shall pay variable land base rent (the "Variable Land Base Rent") in an amount equal to Six Hundred Ninety Thousand and No/100 Dollars (\$690,000.00). The Variable Land Base Rent shall be payable for each twelve (12) month period, in advance, in equal monthly installments, on each Rent Payment Date; provided that if the Rent Commencement Date is not on the first day of a month, then on the Rent Commencement Date Ground Lessee shall pay the Variable Land Base Rent for such partial month on a prorated basis.

4.1.3 On the first (1st) anniversary of the first Rent Payment Date and on each subsequent anniversary of the first Rent Payment Date thereafter during the Term, Variable Land Base Rent shall be increased to equal one hundred one and a half percent (101.5%) of the Variable Land Base Rent in effect during the immediately preceding twelve (12) month period, all as to be set forth in the Commencement Date Letter.



4.1.4 For the first five Lease Years, the Parking Area Base Rent shall be zero. Thereafter, for any calendar quarter during which the Ground Lessee Minimum Return Condition has been satisfied (as determined as of the end of such quarter), Ground Lessor shall be entitled to receive as Parking Area Base Rent for such calendar quarter, a payment, which shall equal thirty percent (30%) of the cumulative Parking Area Gross Revenues through the end of such calendar quarter (or part thereof, with respect to the first quarter and the quarter in which the Expiration Date occurs). The incremental Parking Area Base Rent payment which Ground Lessee is obligated to pay shall be calculated as of the last day of each calendar quarter (or part thereof, with respect to the first quarter and the quarter in which the Expiration Date occurs) and shall be paid not later than fifteen (15) days after the end of such calendar quarter (or part thereof, with respect to the first quarter and the quarter in which the Expiration Date occurs). For the avoidance of doubt, the parties acknowledge that Ground Lessee shall not have an obligation to pay the Parking Area Base Rent during such calendar quarters when the Ground Lessee Minimum Return Condition has not been satisfied as of the last day of such quarter. The Parking Area Base Rent shall become payable when the Ground Lessee Minimum Return Condition has been attained. At any time during the Term after Ground Lessor has exercised its relocation right under Section 2.5 the Relocated Parking Area consists of structured parking, then Parking Area Base Rent, as calculated under this Lease, shall no longer be payable.

4.1.5 With each payment of Parking Area Base Rent, Ground Lessee shall supply Ground Lessor a report certified by an officer of Ground Lessee showing the Parking Area Gross Revenues for the preceding calendar quarter and the calculation of the Parking Area Base Rent for such period. Ground Lessee shall keep in the Property or at some other location in the city in which the Property is located approved in writing by Ground Lessor, a permanent, accurate set of books and records of all Parking Area Gross Revenue derived from the Parking Area, and all supporting records such as sales and parking tax reports, banking records and statements, rent receipts and other rental records. All such books and records shall be retained and preserved for at least six (6) years after the end of the calendar year to which they relate. Ground Lessee shall allow Ground Lessor and its authorized representative(s) to inspect the books, records, sales and parking tax reports, and all material source documents of Ground Lessee and its "Affiliates" (as such defined term is augmented in the definition of "Parking Area Gross Revenues") for the sole purpose of verifying the calculation of the Parking Area Base Rent. Ground Lessor may exercise such inspection rights by delivering written notice to Ground Lessee and identifying the materials to be inspected and the purpose for the inspection. Ground Lessee shall allow such inspection not later than ten (10) days after the date Ground Lessor requests such inspection, and such inspection shall be conducted during reasonable business hours, at the principal office for the Property, or at such other location or time as Ground Lessee and Ground Lessor may agree. Ground Lessor will bear the costs and expenses related to such inspection rights; provided, however, that if the inspection results in a 3% or greater increase in the amount of Parking Area Base Rent that was the subject of the inspection, such costs shall be borne by Ground Lessee. Notwithstanding any provision contained herein, Ground Lessor shall have one (1) year from its receipt of any Ground Lessee's report to conduct an audit of that report. After one (1) year, Ground Lessor shall be deemed to have waived its audit right as to such report.

4.1.6 At any time and from time to time during the Term, Ground Lessee shall have the right to prepay all or any portion of Variable Land Base Rent upon prior written notice



to Ground Lessor (a "Prepayment Notice"). The Prepayment Notice shall set forth (a) the date on which such prepayment shall be made (the "Prepayment Date"), which Prepayment Date shall not be less than ninety (90) days nor more than one hundred fifty (150) days after the date of the Prepayment Notice, (b) Ground Lessee's calculation of the Prepaid Rent Payment (as defined below), and (c) the start and end dates for the period to which such prepayment applies (the "Prepayment Period"). If Ground Lessee exercises its prepayment right under this Section, it shall make a lump sum payment to Ground Lessor on the Prepayment Date in an amount equal to all monthly payments of Variable Land Base Rent payable during the Prepayment Period, as adjusted as provided in Section 4.1.3, discounted at rate equal to the lesser of (i) five and one-quarter percent (5.25%) and (ii) the University's estimated thirty (30) year tax-exempt financing rate as of the Prepayment Date (as determined in good faith by the University's investment bankers and advisors at the time Ground Lessee exercises its prepayment right) (the "Prepaid Rent Payment"). Upon making the Prepaid Rent Payment, Ground Lessee shall be deemed to have paid in full and satisfied its obligation under this Lease to pay Variable Land Base Rent during the Prepayment Period.

**4.2 Administrative CAM.** Ground Lessee shall pay to Ground Lessor as additional rent the Administrative CAM, in advance in equal monthly installments on each Rent Payment Date throughout the Term; provided that if the Rent Commencement Date is not on the first day of a month, then on the Rent Commencement Date Ground Lessee shall pay the Administrative CAM for such partial month on a prorated basis.

**4.3 Impositions and Other Charges.** If the Property is taxed separately then Ground Lessee shall pay directly to the appropriate taxing authority, as additional rent, all Impositions and any related costs, expenses, charges and amounts which Ground Lessee is required to pay under this Lease (collectively, "Taxes"). Ground Lessor shall request the applicable taxing authority to send tax bills for the Property directly to Ground Lessee and shall cooperate with Ground Lessee at no cost to Ground Lessor in Ground Lessee's communications and dealings with the taxing authority. If, on the other hand, the Property is not taxed separately and is therefore taxed under one tax bill along with other property owned by Ground Lessor (such other property together with the Property shall be collectively referred to herein as the "Tax Parcel"), then Ground Lessee shall pay its proportionate share, as reasonably determined by Ground Lessor and Ground Lessee, of such Taxes assessed against the Tax Parcel within ten (10) business days of demand from the Ground Lessor.

**4.4 Rent Taxes.** In addition to Base Rent, Administrative CAM, Impositions and other charges under this Lease, Ground Lessee shall pay to Ground Lessor each month a sum equal to any and all sales taxes on Rent (now existing or hereafter imposed), governmental surcharges, governmental impositions, local taxes and any other similar charges now existing or hereafter imposed, based upon the use or leasing of, or based upon the amount of Rent collected for, the Property.

**4.5 Late Payments; Default Interest.** If Ground Lessee shall fail to pay the Base Rent, Administrative CAM or any and all sales tax which may be due under Section 4.5 on the date the same is due and payable, or any amounts for which Ground Lessee is obligated to reimburse Ground Lessor as set forth in this Lease by the date such payment is due and payable as expressly set forth in this Lease, Ground Lessee shall pay to Ground Lessor, on demand, a late



charge in the amount of one and one-half percent (1.5%) of the amount due but unpaid; provided however, such late charge shall not apply unless such failure shall continue for five (5) days after Ground Lessee's receipt of written notice (provided, however, Ground Lessee shall not be entitled to more than two (2) such written notices during the first twelve (12) month period of the Term and no more than one (1) such written notice during any twelve (12) month period thereafter). If Ground Lessee shall fail to pay the Base Rent, Administrative CAM or any and all sales tax which may be due under Section 4.5 on the date the same is due and payable, or any amounts for which Ground Lessee is obligated to reimburse Ground Lessor as set forth in this Lease by the date set forth in this Lease, Ground Lessee shall pay to Ground Lessor, on demand, interest on the amount due but unpaid at the Default Interest Rate from and after the date such amounts were due until paid in full.

**4.6 Absolutely Triple Net.** This Lease shall be deemed and construed to be a "triple net lease" and Ground Lessee shall pay the Rent to Ground Lessor absolutely "triple net" throughout the Term, without notice, abatement, counterclaim, deduction or set off of any kind, except as otherwise expressly provided in this Lease. Except as otherwise expressly provided in this Lease, the Ground Lessee shall pay and discharge, and, except to the extent caused solely as the result of the gross negligence or willful misconduct of Ground Lessor, indemnify and save harmless Ground Lessor from and against, all costs, operating expenses, Impositions, insurance premiums, fees, payments in respect of Leasehold Mortgages, charges, expenses, costs of compliance with Legal Requirements, and obligations of every kind and nature whatsoever relating to the Property and Improvements.

**4.7 Manner of Payment.** Ground Lessee shall pay all Base Rent, Additional Rent and all other charges due hereunder at Ground Lessor's address designated as the "rent address" in Section 19.2, or as Ground Lessor may otherwise direct, in such United States currency as shall, at the time of payment, be legal tender for the payment of public and private debts.

**4.8 No Termination.** Except to the extent expressly set forth in this Lease, no happening, event, occurrence, or situation whatsoever during the Term, whether foreseen or unforeseen, and however extraordinary, shall permit Ground Lessee to quit or surrender the Property or terminate this Lease or shall relieve Ground Lessee of its liability to pay the full Base Rent and Additional Rent, or relieve Ground Lessee from any of its other obligations under this Lease, and Ground Lessee hereby waives any rights now or hereafter conferred upon it by statute, common law, proclamation, decree, order or otherwise, at law or in equity, to quit or surrender the Property or terminate this Lease, or any part thereof, or to any abatement, diminution, reduction or suspension of Base Rent or Additional Rent on account of any such event, happening, occurrence or situation.

**4.9 Security Deposit.** As security only for the payment by Ground Lessee of Base Rent for the period of time commencing on the Original Commencement Date and ending on the first (1st) anniversary of the Rent Commencement Date, Ground Lessee shall provide Ground Lessor, contemporaneously with its execution of this Lease, a security deposit equal to Six Hundred Thousand Dollars (\$600,000) (the "Security Deposit") which shall be held in accordance with the terms of this Section and which shall be made, at Ground Lessee's election, in cash or in the form of an unconditional, irrevocable letter of credit with a term of not less than one (1) year to be deposited with Ground Lessor, in the amount of the Security Deposit, which



letter of credit shall be in form and substance, and issued by a lending institution, acceptable to Ground Lessor. Any such letter of credit shall allow partial drawings. Ground Lessee shall deliver to Ground Lessor a replacement letter of credit not later than thirty (30) days before the expiration of any current letter of credit on deposit with Ground Lessor. If the Letter of Credit is not renewed within thirty (30) days before the expiration date of such Letter of Credit, then Ground Lessor shall be entitled to draw on such Letter of Credit and hold the cash as the Security Deposit in accordance with this Section. If cash is deposited, then Ground Lessor shall deposit such funds in a separate interest bearing account and shall not commingle such cash with Ground Lessor's other funds. Interest earned on the Security Deposit shall become a part of the Security Deposit. The Security Deposit shall be returned to Ground Lessee (or the letter of credit evidencing the Security Deposit released) within thirty (30) days after (i) any termination of this Lease other than due to an Event of Ground Lessee's Default or (ii) the expiration of the first (1st) anniversary of the Rent Commencement Date, provided Ground Lessee has fully paid Base Rent for the period of time commencing on the Original Commencement Date and ending on the first (1st) anniversary thereof and the Ground Lessee is not otherwise then in default under the terms of this Lease. Upon the occurrence of an Event of Ground Lessee's Default on account of Ground Lessee's failure to pay, when due and payable hereunder beyond the expiration of applicable notice and cure periods, any installment of Base Rent during the period of time commencing on the Original Commencement Date and ending on the first (1st) anniversary thereof Ground Lessor shall have the right to apply any part of said Security Deposit to any such due and unpaid Base Rent during such period of time, without prejudice to any other rights which Ground Lessor may have as a result of such Event of Ground Lessee's Default. If all or any part of the Security Deposit is so applied, Ground Lessee immediately shall restore the Security Deposit to its original amount. In the event of a sale of the Property, Ground Lessor shall transfer the Security Deposit to the vendee pursuant to an assignment and assumption agreement acceptable to Ground Lessee and Ground Lessor, and Ground Lessor shall thereupon be released from all liability for the return of such Security Deposit. If a letter of credit is deposited, within thirty (30) days of Ground Lessor's request, Ground Lessee shall cause a new letter of credit (or an amendment to the then-existing letter of credit) to be issued naming the successor Ground Lessor and its successors and assigns as the beneficiary thereunder. Ground Lessee shall look solely to the successor Ground Lessor for the return of said Security Deposit. This provision shall apply to every transfer or assignment made of the Security Deposit to a successor Ground Lessor. In connection with any Mortgages hereafter granted by Ground Lessor encumbering its fee interest in the Property or any portion thereof, Ground Lessor may execute a collateral assignment of its interest under this Lease, including without limitation, Ground Lessor's interest in the Security Deposit.

**4.10 Financial Reporting.** Upon request of Ground Lessor, but not more than once during any twelve (12) month period, Ground Lessee shall furnish to Ground Lessor the most current annual financial statements of Ground Lessee, including statements of income and expense and cash flow, balance sheets and income statement, all reviewed by an independent certified public accountant. Such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied. Such financial statements shall be accompanied by an officer's certificate of Ground Lessee stating that such financial statements present fairly the financial condition and results of operation of Ground Lessee as of the date of such statements.



## **5. USE OF PROPERTY**

### **5.1 Intended and Permitted Uses.**

5.1.1 Ground Lessee shall use the Property and Improvements solely for the Intended Uses and for any general office uses that may be permitted in accordance with Section 5.1.2 of this Lease.

5.1.2 If any space within the Building that is intended to be sublet is not sublet for the Intended Uses by the date that is eighteen (18) months after any date during the Term that such space becomes available for sublet, and provided that Ground Lessee has used good faith, commercially reasonable and diligent continuous efforts for a period of not less than eighteen (18) months to sublet such space for the Intended Uses, then within thirty (30) days after such eighteen (18) month period Ground Lessee may request Ground Lessor's consent to allow such space to be sublet for general office purposes. Such request (a "Change in Use Notice") shall be in writing and shall include back-up documentation satisfactory to Ground Lessor demonstrating that Ground Lessee has used good faith, commercially reasonable and diligent continuous efforts for a period of not less than eighteen (18) months to sublet such space for the Intended Uses, but shall have failed in its efforts.

- (a) If Ground Lessee timely delivers to Ground Lessor a Change in Use Notice as provided in Section 5.1.2, then Ground Lessee shall be permitted to enter into a Qualified Sublease with respect to the space identified in such Change in Use Notice under which Qualified Sublease the permitted uses may include general office uses in addition to the Intended Uses if (i) within forty five (45) days of Ground Lessor's receipt of a Change in Use Notice Ground Lessor notifies Ground Lessee in writing that, in Ground Lessor's sole determination, (a) allowing general office use of such space shall not cause the Property or any portion thereof, or any of Ground Lessor's or its Affiliates' other properties, to undergo development of regional impact review due to their then-current development uses or any anticipated future development or uses and (b) any development order/approval with respect to the Property or any portion thereof, or any of Ground Lessor's or its Affiliates' other properties, shall not be affected and (ii) Ground Lessee shall have used its good faith, commercially reasonable and diligent continuous efforts for a period in excess of eighteen (18) months to sublet or re-sublet such space for the Intended Uses, but shall have failed in its efforts. After expiration or termination of any such Qualified Sublease, general office uses shall no longer be a Permitted Use of the space identified in the Change in Use Notice unless Ground Lessee again complies with the requirements of Section 5.1.2 with respect to such space.
- (b) If Ground Lessee fails to deliver to Ground Lessor a Change in Use Notice within the time period set forth in Section 5.1.2, then, if



and when Ground Lessee identifies a subtenant to use the applicable space for general office uses, Ground Lessee shall resubmit to Ground Lessor a Change in Use Notice and the provisions of Section 5.1.2.1 shall be applicable.

**5.2 Unlawful Uses.** Ground Lessee shall not use, or allow the use of, the Property or Improvements for any use in violation of any Legal Requirements. Ground Lessee shall not suffer any act to be done or any condition to exist on the Property or Improvements, which may be dangerous unless safeguarded as required under Legal Requirements, or which may in law constitute a public or private nuisance or which may make void or voidable any insurance then in force with respect thereto or shall make it impossible to obtain insurance required to be furnished by Ground Lessee hereunder. Ground Lessee shall not suffer or permit the Property to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Ground Lessor's title to the Property, or in such manner as might reasonably make possible any claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Property or any portion thereof.

**5.3 No Waste.** Ground Lessee shall not permit or suffer to occur any physical waste, damage or injury to the Property or Improvements or any part thereof, excepting damage resulting from casualty or condemnation as described in Article IX and Article X.

## **6. IMPROVEMENTS**

**6.1 Initial Improvements.** Ground Lessee shall construct on the Property, at its sole cost and expense, the Initial Improvements substantially in accordance with the Project Plan, the Final Construction Documents and the Land Use Approvals. Prior to Construction Commencement of each component of the Initial Improvements (i.e., the Tower Building and the Expansion), Ground Lessee shall provide to Ground Lessor all items set forth in Section 1 of Schedule 6.1 attached hereto with respect to such component; provided however, payment and performance bonds shall not be required if Ground Lessor approves the general contractor. Ground Lessee (i) shall cause construction of the Tower Building to commence not later than the later of (A) thirty (30) days after the issuance of the first permit for vertical construction of the Tower Building or (B) thirty (30) days after the date that the financing contingency set forth in Section 3.1.3 is satisfied or waived, and shall cause construction of the Expansion to commence not later than thirty (30) days after the issuance of the first permit for vertical construction of the Expansion, (ii) shall not voluntarily cease construction of the Initial Improvements for a period in excess of ninety (90) consecutive days and (iii) shall diligently prosecute construction of the Initial Improvements through Final Completion. Ground Lessee shall be deemed to have "commenced construction" of the Tower Building and/or the Expansion, as the case may be, pursuant to clauses (i)(A) and (i)(B) above, upon its commencement of construction of the foundations of the Tower Building and/or the Expansion, as the case may be. Ground Lessee shall use commercially reasonable efforts to ensure that the Initial Improvements are constructed to achieve the credits required to receive a certification by the U.S. Green Building Council ("USGBC") at the level of Silver under the LEED Rating System. In the event the Initial Improvements do not obtain certification by the USGBC at the level of at least Silver, upon completion of construction and the final certification review process, Ground Lessee shall appeal the denial of any credits requested that were not granted by the USGBC so as to obtain a



certification by the USGBC at the level of at least Silver. If, upon a final determination of any such appeal, the Initial Improvements do not obtain certification at a level of at least Silver, Ground Lessee shall be responsible at its sole cost and expense to take corrective action in a manner approved by Ground Lessor within thirty (30) days of Ground's Lessee's request therefor to ensure that the Initial Improvements obtain certification at the level of Silver. If the USGBC adopts regulations that provide for periodic re-certification or filings for existing certified buildings, then Ground Lessee shall make any such administrative filing and pay any associated nominal fees to maintain the Initial Improvement's certification; provided, however, Ground Lessee shall not be obligated to make any changes or alterations to the Property or incur any costs other than nominal filing fees.

## **6.2 Demolition, Replacement Improvements, Alterations and Signage.**

6.2.1 In addition to the provisions of Article IX and Article X, at any time after forty (40) years from the Final Completion of all of the Initial Improvements, upon not less than twelve (12) months prior written notice from Ground Lessee delivered to Ground Lessor (the "**Demolition Notice**"), Ground Lessee may from time to time demolish the Initial Improvements and construct, or not construct, replacement improvements for the Initial Improvements so demolished ("**Replacement Improvements**"), all subject to the requirements of this Section 6.2. The Demolition Notice must state whether Ground Lessee intends to construct Replacement Improvements, and if so, such Demolition Notice must include evidence reasonably satisfactory to Ground Lessor that Ground Lessee has available to it sufficient funds (debt and/or equity) to complete the Replacement Improvements. If Ground Lessee indicates in the Demolition Notice that Ground Lessee does not intend to construct Replacement Improvements, or if the Demolition Notice fails to include evidence reasonably satisfactory to Ground Lessor that Ground Lessee has available to it sufficient funds (debt and/or equity) to complete the Replacement Improvements, then Ground Lessor, in its sole discretion, may elect to terminate this Lease by written notice delivered to Ground Lessee (a "**Termination Notice**") within six (6) months after Ground Lessor's receipt of the Demolition Notice. If Ground Lessor timely delivers a Termination Notice, then Ground Lessee shall not demolish the Initial Improvements, Ground Lessee shall pay Rent through the date of the Termination Notice, this Lease shall terminate as of the date of the Termination Notice and all right, title and interest of Ground Lessee hereunder shall expire, and Ground Lessee shall surrender possession of the Property and Improvements to Ground Lessor. If Ground Lessor does not timely deliver a Termination Notice, then Ground Lessee may proceed to demolish the Initial Improvements provided that Ground Lessee (i) bonds such demolition in a manner fully satisfactory to Ground Lessor, (ii) continuously and expeditiously completes such demolition after such demolition is commenced, (iii) immediately after completion of demolition removes all debris from the Property, (iv) immediately after completion of demolition installs lawn on the Property in a manner satisfactory to Ground Lessor, (v) maintains such lawn at all times until commencement of construction of the Replacement Improvements, (vi) Ground Lessee shall not move, relocate or block the Access Drive unless Ground Lessee obtains Ground Lessor's prior written consent, which Ground Lessor may withhold in its sole discretion, (vii) Ground Lessee shall not remove any columns, support structures, roofs or exterior walls that any improvements existing from time to time within the Air Parcel abut or are attached or are anticipated to abut or be attached and (viii) Ground Lessee shall not remove any columns, support structures, roofs or exterior walls that any improvements existing from time to time within other portions of the Surrounding



Area abut or are attached or are anticipated to abut or be attached (provided such abutting and/or attached improvements were approved by Ground Lessee prior to their initial construction), unless Ground Lessee obtains Ground Lessor's prior written consent, which Ground Lessor may withhold in its sole discretion. If Ground Lessor does not timely deliver a Termination Notice, but Ground Lessee does not commence construction of Replacement Improvements within three (3) years after commencement of demolition, or does not achieve Final Completion of such Replacement Improvements within seven (7) years after commencement of demolition, then either party may elect to terminate this Lease by sending written notice of such election to the other party, in which event the Rent for the entire remaining Term shall accelerate and be immediately due and payable, this Lease shall terminate and all right, title and interest of Ground Lessee hereunder shall expire, and Ground Lessee shall surrender possession of the Property and any Improvements thereon to Ground Lessor.

6.2.2 Except for demolition in connection with a casualty or condemnation, in which event Article IX of this Lease shall apply, any material demolition of the Initial Improvements proposed to be made prior to that date that is forty (40) years after Final Completion of all of the Initial Improvements shall be subject to the prior written approval of Ground Lessor which may be granted or withheld in Ground Lessor's sole and absolute discretion.

6.2.3 Subject to Section 6.2.4 below, any Replacement Improvements, Material Alterations and Signage shall be subject to the prior written approval of Ground Lessor, which approval shall be granted or withheld within thirty (30) days of request therefor, and which approval may be granted or withheld in Ground Lessor's sole and absolute discretion with respect to Signage. The term "Signage" shall mean any and all exterior signage of any type, size or shape which is to be located by Ground Lessee on or around the Building or the Property. Ground Lessee shall prohibit all of its subtenants from locating any Signage on the exterior of the Building or the Property and shall include a clause to such effect in all of its subleases. Notwithstanding anything to the contrary herein, (i) subject to Legal Requirements and except for emergencies, Ground Lessee shall not move, relocate or block the Access Drive unless Ground Lessee obtains Ground Lessor's prior written consent, which Ground Lessor may withhold in its sole discretion, (ii) Ground Lessee shall not remove any columns, support structures, roofs or exterior walls that any improvements existing from time to time within the Air Parcel abut or are attached or are anticipated to abut or be attached and (iii) Ground Lessee shall not remove any columns, support structures, roofs or exterior walls that any improvements existing from time to time within other portions of the Surrounding Area abut or are attached or are anticipated to abut or be attached (provided such abutting and/or attached improvements were approved by Ground Lessee prior to their initial construction), unless Ground Lessee obtains Ground Lessor's prior written consent, which Ground Lessor may withhold in its sole discretion and (iii) any and all Replacement Improvements, Material Alterations, Signage and any and all other alterations shall be consistent with Applicable Standards, shall comply with all Legal Requirements and shall be constructed to achieve a certification by the USGBC of not less than Silver under the LEED Rating System, or, as applicable, to maintain the USGBC certification received with respect to the Initial Improvements, which shall not be less than Silver. Further notwithstanding anything to the contrary herein, all Signage, advertising and other publicity materials and matters having or containing any reference to the University, the



University's logos or the University's trademarks shall be subject to the University's approval, which approval may be granted or withheld in the University's sole discretion.

6.2.4 All schematic plans and design development documents for the construction or installation of any Replacement Improvements, Material Alterations and Signage shall be subject to Ground Lessor's prior written approval, which approval shall be granted or withheld within thirty (30) days of request therefor. Plans shall be submitted to Ground Lessor for all Replacement Improvements, Material Alterations and Signage, together with written request for approval of such plans, and Ground Lessor shall have thirty (30) days to review and approve such plans; provided, however, Ground Lessor shall be obligated to approve such plans as long as (i) such plans conform to all applicable Legal Requirements, (ii) are consistent with the Applicable Standards and the Design Standards set forth in the Development Agreement, (iii) the Access Drive is not contemplated to be moved or relocated, (iv) any columns, support structures, roofs or exterior walls that any improvements existing from time to time within the Air Parcel abut or are attached or are anticipated to abut or be attached are not contemplated to be removed, (iv) any columns, support structures, roofs or exterior walls that any improvements existing from time to time within other portions of the Surrounding Area abut or are attached or are anticipated to abut or be attached are not contemplated to be removed (provided however, that this subsection (iv) shall apply only if such abutting and/or attached improvements were approved by Ground Lessee prior to their initial construction) and (v) as to plans for the installation of any Signage, such Signage plans shall comply with any then-current signage requirements of Ground Lessor (which Ground Lessee shall request a copy of prior to engaging any company to prepare any such Signage plans). Ground Lessee's written notice requesting approval of plans must include the following statement conspicuously printed in boldfaced type immediately below the addressee line on the first page of the notice: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS THIRTY (30) DAYS AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR APPROVAL OF THE REQUESTS SET FORTH IN THIS LETTER.** If Ground Lessor disapproves any of such plans, it shall notify Ground Lessee within such thirty (30) day period and shall indicate in detail the nature of such revisions as must be made for the plans to be approved. If Ground Lessor fails to send written notice to Ground Lessee objecting to such Replacement Improvements, Material Alterations or Signage, then such Replacement Improvements, Material Alterations or Signage shall be deemed to be in compliance with the provisions of this Article and approved by Ground Lessor. Ground Lessee may, without Ground Lessor's prior written approval, make all other changes and alterations (that are not Replacement Improvements, Material Alterations or Signage) to the exterior and interior of the Improvements; provided, however, that, subject to Legal Requirements and except for emergencies, Ground Lessee shall not move, relocate or block the Access Drive unless Ground Lessee obtains Ground Lessor's prior written consent, which Ground Lessor may withhold in its sole discretion, and provided further that all such changes and alterations, whether structural or nonstructural, shall comply with all Legal Requirements, be consistent with all Applicable Standards and shall be constructed in manner so as to maintain the USGBC certification of the Initial Improvements, which shall not be less than Silver under the LEED Rating System. Ground Lessee shall deliver to Ground Lessor copies of all plans for any structural changes or alterations performed by Ground Lessee, whether or not Ground Lessor's consent is required under the terms of this Lease. Approval by Ground Lessor of any plans, specifications and design documents shall not constitute a representation, warranty or other assurance by Ground Lessor that such plans, specifications or design documents comply



with Legal Requirements or meet any other legal standard. Prior to commencement of development, construction or installation of any Replacement Improvements, Material Alterations or Signage, Ground Lessee shall provide to Ground Lessor all items set forth in Schedule 6.1 Section 2 attached, all of which shall be subject to Ground Lessor's approval, which approval shall be granted or withheld within thirty (30) days of request therefor; provided however, payment and performance bonds shall not be required if Ground Lessor approves the general contractor with respect to the applicable Replacement Improvements, Material Alterations and Signage.

### 6.3 Construction Requirements.

6.3.1 In connection with the construction of Improvements, Ground Lessee shall, at its own cost and expense, comply with all applicable Legal Requirements and shall procure all requisite permits and approvals. Upon request of Ground Lessee from time to time, Ground Lessor shall cooperate with Ground Lessee in obtaining all such permits and approvals, and will join in the filing of applications for such permits and approvals as required, provided that Ground Lessor shall not be required to incur any cost, expense or liability.

6.3.2 Ground Lessee shall indemnify and hold Ground Lessor harmless from any and all losses, liens, charges, claims for damages and expenses of any nature whatsoever arising out of or in any way connected with demolition, excavation, alteration or construction of all Improvements, except to the extent caused solely as the result of the gross negligence or willful misconduct of Ground Lessor.

6.3.3 All Improvements shall be constructed in a good and workmanlike manner and in compliance with all Legal Requirements, and Ground Lessee shall comply strictly with all applicable Legal Requirements, including without limitation, Florida Statutes Chapter 713 Part I and any successor statute.

6.3.4 Ground Lessee shall require all contractors and subcontractors performing work on or about the Property in connection with the Improvements to provide insurance coverage for workmen's compensation at levels then required under Legal Requirements. Ground Lessee shall furnish copies of insurance certificates or policies evidencing such coverage with respect to all general contractors prior to the commencement of such work.

6.3.5 Ground Lessee shall not commence construction of any Replacement Improvements until Ground Lessee has furnished to Ground Lessor evidence reasonably satisfactory to Ground Lessor that Ground Lessee has available to it sufficient funds (debt and/or equity) to complete the Replacement Improvements. Ground Lessee shall provide such evidence to Ground Lessor not later than fifteen (15) days after Ground Lessor's written request, and Ground Lessor shall grant or deny its approval within thirty (30) days of receipt of such evidence.

6.3.6 Promptly following Substantial Completion of any portion of the Initial Improvements and any Replacement Improvements, Ground Lessee shall furnish to Ground Lessor (i) two sets of "as built" drawings of such Initial Improvements or Replacement Improvements, as applicable, and (ii) a copy of all certificates of Core and Shell completion and



certificates of occupancy issued with respect to such Initial Improvements and Replacement Improvements, as applicable.

**6.4 No Authority to Bind Fee.** Pursuant to Florida Statutes Section 713.10, any and all liens or lien rights shall extend to and only to the right, title and interest of Ground Lessee in the Improvements and the right, title and interest of Ground Lessor in the Property, Improvements and Surrounding Area shall not be subject to liens or claims of liens for improvements made by Ground Lessee. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Ground Lessor, express or implied by implication or otherwise, to any contractor, subcontractor, laborer or materialman to perform any labor or furnish any materials for any specific improvement of, alteration to, or repair of, the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof, nor as giving Ground Lessee, any Mortgagee, any sublessee or any other Person any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Ground Lessor's interest in the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof or against other assets of Ground Lessor, or Ground Lessor's interest in any Rent. Notice is hereby given, and Ground Lessee shall cause all construction agreements to provide, that Ground Lessor shall not be liable for any work performed or to be performed at the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof for Ground Lessee, any Mortgagee, any sublessee or other Person for any materials furnished or to be furnished to the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect Ground Lessor's interest in the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof or any other assets of Ground Lessor, or Ground Lessor's interest in any Rent.

#### **6.5 Construction Liens.**

**6.5.1** If any mechanic's lien, materialmen's lien, supplier's lien or other lien shall be filed against the Property or any part thereof, Improvements or any part thereof or Surrounding Area or any part thereof, based upon any act of Ground Lessee or any Person claiming through or under Ground Lessee, then within sixty (60) days of the filing thereof, Ground Lessee shall (i) promptly take such action (by bonding, security deposit, payment or otherwise) as may be necessary to release or satisfy such lien, or (ii) if Ground Lessee desires to contest such lien, furnish to Ground Lessor such security as Ground Lessor may reasonably require to afford protection against such lien. Ground Lessee may bond such lien such that it would be removed of record or furnish to Ground Lessor such security as Ground Lessor may reasonably require to afford protection against such lien.

**6.5.2** If Ground Lessee shall fail to comply with Section 6.5.1 with respect to any mechanic's lien, materialmen's lien, supplier's lien or other lien, then, in addition to any other right or remedy, Ground Lessor may, but shall not be obligated to procure the release of such lien by bonding proceedings, not payment. Ground Lessee shall reimburse and pay to the Ground Lessor on demand any and all costs and expenses, including reasonable attorney's fees,



incurred by Ground Lessor in connection therewith, together with interest thereon at the Default Interest Rate from the date such costs and expenses were incurred.

**6.6 Title to Improvements.** Title to all Improvements shall be in and remain in Ground Lessee for and during the entire Term and Ground Lessee shall be entitled to any federal, state or local tax and other tax benefits arising from ownership of the Improvements, but upon the expiration or termination of the Term, title shall vest in Ground Lessor in accordance with Section 15.1 as to all Improvements then upon the Property.

## **7. IMPOSITIONS**

### **7.1 Ground Lessee to Pay.**

7.1.1 Subject to Section 4.6, Ground Lessee shall pay, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes (including without limitation any business improvement district fees), assessments, water and sewer rents and charges, use and occupancy taxes, license and permit fees, vault space rent and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature for public improvements or benefits (collectively, "**Impositions**"), which are assessed, levied, confirmed, imposed, become a lien or become payable during the Term upon or in respect of the Property, the Improvements or the sidewalks, streets or vaults adjacent to the Property (collectively, "**Taxable Area**"), provided that:

7.1.2 Subject to Section 4.6, any Imposition (or installment thereof referred to in 7.1.3) which relates to any period, a part of which is not within the Term, shall be prorated between Ground Lessor and Ground Lessee so that Ground Lessee shall pay only that proportion thereof which the part of such period within the Term bears to the entire period; and

7.1.3 Subject to Sections 4.6 and 7.1.2, any Imposition payable by Ground Lessee which would not otherwise be due until after the Term, shall be paid by Ground Lessee to Ground Lessor upon the last day of such Term, provided that if any assessment becomes a lien during the Term and is payable in installments, Ground Lessee shall pay only the installments thereof which become due and payable during the Term, together with interest thereon and all interest accrued on any unpaid balance, and Ground Lessor shall cooperate with Ground Lessee in making any application which may be necessary to permit the payment of such assessment in installments.

**7.2 No Liability for Ground Lessor's Taxes.** Nothing contained in this Lease shall require Ground Lessee to pay (i) any income, franchise, corporate, succession, inheritance or capital levy tax of Ground Lessor, except as set forth in Section 4.7, or (ii) any transfer, recordation or similar tax incident to a transfer of Ground Lessor's fee interest in the Property, provided that if, at any time during the Term, the methods or scope of taxation prevailing at the applicable Commencement Date shall be altered or enlarged so as to cause the whole or any part of the taxes, assessments, levies, charges, or any other Impositions now or hereafter levied, assessed or imposed on real estate and the improvements thereof to be levied, assessed and imposed, wholly or partially in substitution therefor upon Ground Lessor or upon the Base Rent and/or Additional Rent payable to Ground Lessor, then all such taxes, assessments, levies,



charges or Impositions, or the part thereof, so measured or based, shall be deemed to be included within the term "Impositions" for purposes of this Lease, to the extent that such Impositions would be payable if the Taxable Area were the only property of Ground Lessor subject to such Impositions, and Ground Lessee shall pay and discharge the same as herein provided in respect of the payment of Impositions.

**7.3 Evidence of Payment.** Ground Lessor shall cooperate, at no cost to Ground Lessor, with Ground Lessee who shall be responsible for obtaining bills for all Impositions directly from the applicable taxing authority. Ground Lessee shall furnish to Ground Lessor official receipts of the appropriate taxing authority or other reasonable evidence demonstrating payment of any Imposition payable by Ground Lessee before any penalty, fine, interest or cost would become payable thereon for non-payment thereof.

**7.4 Ground Lessor's Right to Pay Impositions.** Subject to Ground Lessee's rights under Section 7.5, if any Imposition shall not have been paid as required in Section 7.1, then Ground Lessor may, but shall not be required to, pay the same, and shall thereupon become entitled to repayment by Ground Lessee of the same on demand, together with interest thereon at the Default Interest Rate for the period from the date of payment by the Ground Lessor until repaid by Ground Lessee.

**7.5 Contest of Impositions.**

7.5.1 Ground Lessee may in good faith contest, seek to abate or otherwise challenge any Imposition in either Ground Lessee's name or Ground Lessor's name, or both, and may take any and all action with respect thereto as it may deem necessary or advisable, and Ground Lessor shall cooperate with Ground Lessee and execute such papers as may from time to time be necessary to bring, defend or facilitate such proceedings, provided that Ground Lessor shall not be subject to any expense, cost or liability as a result thereof and Ground Lessee shall indemnify and save Ground Lessor harmless from and against all such costs, and liabilities and expenses incurred in connection with such proceedings, and provided further that Ground Lessee may not undertake any challenge to any Imposition that creates any risk that the Property or Leasehold Estate will be sold for non-payment of such Imposition unless Ground Lessee provides a bond, indemnity or other assurance reasonably satisfactory to Ground Lessor that all Impositions being challenged, together with all interest and penalties thereon, will be paid as finally determined and in all events before any sale of the Property or Leasehold Estate as a result of such non-payment. All refunds and abatements shall belong to Ground Lessee or Ground Lessor, depending upon which party paid or would have been obligated to pay (as between Ground Lessee and Ground Lessor) the Impositions in respect of which the refund or abatement was made.

7.5.2 If in connection with such proceedings Ground Lessee shall defer payment of any Imposition, then upon termination of such proceedings, Ground Lessee shall pay the amount, if any, of such Imposition as finally determined therein, the payment of which may have been deferred during the prosecution of such proceedings, together with all fees, penalties or other liabilities in connection therewith.



7.5.3 With respect to Impositions which are payable after expiration of the Term, Ground Lessor may in good faith contest, seek to abate or otherwise challenge such Imposition in either Ground Lessee's name or Ground Lessor's name, or both, and may take any and all action with respect thereto as it may deem necessary or advisable, and Ground Lessee shall cooperate with Ground Lessor and execute such papers as may from time to time be necessary to bring, defend or facilitate such proceedings, provided that Ground Lessee shall not be subject to any expense, cost or liability as a result thereof and Ground Lessor shall indemnify and save Ground Lessee harmless from and against all such costs, and liabilities and expenses incurred in connection with such proceedings. All refunds and abatements shall belong to Ground Lessee or Ground Lessor, depending upon which party paid or would have been obligated to pay (as between Ground Lessee and Ground Lessor) the Impositions in respect of which the refund or abatement was made.

## **8. INSURANCE**

**8.1 Pre-Construction.** During the period from the applicable Commencement Date until Construction Commencement, Ground Lessee shall maintain, with respect to the portion of the Property to which such Commencement Date relates, at its sole cost and expense, the following:

8.1.1 commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Property and Improvements, with limits of Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate, which may be arranged through a combination of primary and excess policies;

8.1.2 automobile liability insurance with combined single limits of Two Million Dollars (\$2,000,000); and

8.1.3 workers compensation insurance with statutory limits, and employers liability coverage with limits of One Million Dollars (\$1,000,000) for each accident or illness.

**8.2 During Construction.** With respect to each portion of the Initial Improvements, during the period from Construction Commencement of such portion of the Initial Improvements until Substantial Completion of such portion of the Initial Improvements, Ground Lessee shall maintain or cause to be maintained, at its sole own cost and expense, the following:

8.2.1 builder's risk insurance in so-called non-reporting form upon the Initial Improvements while under construction, in such amounts and with such coverages as are customarily required by an Institutional Lender on comparable properties in Miami-Dade County, Florida;

8.2.2 commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Property and Improvements, with limits of Twenty five Million Dollars (\$25,000,000) per occurrence, which may be arranged through a combination of primary and excess policies. Such insurance shall be primary and non-contributory, shall be written on an occurrence form (i.e., not a claims-made form), and shall



have coverage for (i) completed operations liability, (ii) independent contractor liability and (iii) blanket contractual liability;

8.2.3 automobile liability insurance with combined single limits of Two Million Dollars (\$2,000,000);

8.2.4 workers compensation insurance with statutory limits, and employers liability coverage with limits of One Million Dollars (\$1,000,000) for each accident or illness; and

8.2.5 contractor's equipment insurance with limits adequate to cover all property of the contractor brought onto the Property, including a waiver of subrogation against Ground Lessor.

**8.3 Following Substantial Completion.** From and after Substantial Completion of each portion of the Initial Improvements, Ground Lessee shall maintain, with respect to each portion of the Initial Improvements that has reached Substantial Completion, at its own cost and expense:

8.3.1 all risk property insurance on the Improvements and personal property with limits equal to 100% of the full replacement cost which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) waiving all co-insurance provisions; providing for no deductible in excess of \$100,000 (except for the perils of wind and flood from a named storm as designated by the National Hurricane Center where the deductible shall not be in excess of 3% of the total insured value); and providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsement together with an Ordinance of Law Coverage or Enforcement endorsement if any of the Improvements or the use of the Improvements shall at any time constitute legal non-conforming structures or uses, and with an endorsement for nuclear, war and terrorism coverage, if available on commercially reasonable terms (which terms include a premium of not more than ten percent (10%) of the premium for the property insurance policy allocable to the Improvements).

8.3.2 business interruption/loss of rents insurance with loss payable to Ground Lessee and covering all risk required to be covered by the insurance providing for in Section 8.3.1; with limits sufficient to pay any Rent under this Lease during the period of rebuilding but not more than a period of one (1) year from occurrence of the loss. The proceeds of such insurance shall be utilized by Ground Lessee to fulfill its obligations to pay Rent and to comply with its other obligations under this Lease;

8.3.3 commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Property and Improvements, with limits of Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate, which may be arranged through a combination of primary and excess policies. Such insurance shall be primary and non-contributory, shall be written on an occurrence form (i.e., not a claims-made form), and shall have coverage for (i) completed operations liability, (ii) independent contractor liability and (iii) blanket contractual liability;



8.3.4 automobile liability insurance with combined single limits of Two Million Dollars (\$2,000,000); and

8.3.5 workers compensation insurance with statutory limits, and employers liability coverage with limits of One Million Dollars (\$1,000,000) for each accident or illness.

**8.4 Nature of Policies.** All insurance to be obtained pursuant to this Article VIII shall:

8.4.1 be obtained from insurers of recognized responsibility, rated at least Class A - Level VI by the A. M. Best Company, Inc. or an equivalent rating by another national rating organization, authorized to do business in the State of Florida;

8.4.2 provide that the insurers will endeavor to provide at least thirty (30) days' prior written notice to Ground Lessor and Ground Lessee prior to canceling such policies;

8.4.3 provide that any losses thereunder in excess of One Million Dollars (\$1,000,000) shall be adjusted with Ground Lessor and Ground Lessee;

8.4.4 in the case of commercial general liability policies, name Ground Lessor as an additional insured;

8.4.5 in the case of the insurance required under Sections 8.2.1, 8.3.1 and 8.3.2, name Ground Lessor as an additional insured and loss payee as its interests may appear; and

8.4.6 contain an agreement by the insurer that loss shall be payable notwithstanding any negligence of Ground Lessee and waiving any right of subrogation by the insurer to any claims of Ground Lessee against Ground Lessor.

**8.5 Evidence of Coverage.** Ground Lessee has delivered to Ground Lessor a copy of each insurance policy or policies required under this Article VIII with respect to the Original Property, or certificates thereof, with evidence of the payment of the premiums therefor, and at least ten (10) business days before the Additional Land Commencement Date, Ground Lessee shall deliver to Ground Lessor a copy of each insurance policy or policies required under this Article VIII with respect to the Additional Property, or certificates thereof, with evidence of the payment of the premiums therefor. At least ten (10) days prior to expiration of any such policy or policies, Ground Lessee shall deliver to Ground Lessor evidence of the renewal or replacement thereof, which evidence may include certification by Ground Lessee that such insurance will be in place as of the expiration date, including the names of the possible insurers. If Ground Lessee fails to provide to Ground Lessor evidence of continuous insurance coverage in accordance with this Section 8.5, Ground Lessor may procure any such insurance in accordance with Section 14.3 hereof for such periods as Ground Lessor shall elect, and Ground Lessee shall, on demand, reimburse Ground Lessor for all expenditures for such insurance with interest thereon at an annual rate equal to the Default Interest Rate.

**8.6 Compliance with Policies.** Ground Lessee shall comply with the requirements of all policies of insurance which Ground Lessee is required to maintain pursuant to this Article



VIII, together with the requirements and rules instituted by the various insurance carriers from time to time with respect to such policies.

**8.7 Construction Period Insurance after Initial Improvements.** If Ground Lessee proceeds with demolition of the Initial Improvements and construction of Replacement Improvements, or construction of Material Alterations, the provisions of Section 8.2 shall be applicable during the period of construction until Substantial Completion of the Replacement Improvements or Material Alterations, as applicable, and the provisions of Section 8.3 shall be applicable from and after Substantial Completion of the Replacement Improvements or Material Alterations, as applicable. This Section is not intended to permit or authorize Ground Lessee to demolish the Improvements and to construct Replacement Improvements or Material Alterations except as otherwise specifically provided in this Lease.

**8.8 Changes in Coverage.**

8.8.1 Either Ground Lessor or Ground Lessee may request a redetermination of the replacement cost of the Improvements by an independent appraisal satisfactory to the insurer at any time from and after the anniversary of Substantial Completion of all of the Initial Improvements, provided that such requests by any party are not made more often than once every five (5) years and that the party making such request pays for the cost of such redetermination.

8.8.2 From time to time during the Term, Ground Lessor may request modifications (including increases or decreases in limits and new types or terms of policies and endorsements) to the coverages, limitations or terms of policies described in Sections 8.1 through 8.4, and Ground Lessee shall not unreasonably withhold its consent to such modifications provided that such modifications are consistent with insurance policies then being written on comparable properties in Miami-Dade County, Florida.

**8.9 Waiver of Subrogation.** A full waiver of subrogation shall be obtained from all insurance carriers. Ground Lessee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Ground Lessor in connection with any damage covered by any policy. Ground Lessor shall cause any insurance policy it elects to obtain in its sole discretion to provide that the insurance company waives all right of recovery by way of subrogation against Ground Lessee in connection with any damage covered by any policy.

**8.10 Indemnification of Ground Lessor Indemnitees.** Ground Lessee shall indemnify and save harmless Ground Lessor Indemnitees against and from any and all Claims by or on behalf of any Person or Persons arising during the Term (including without limitation Claims for bodily injury, death and property damage) from, in connection with or based upon (i) the use, occupancy, maintenance, repair, operation and/or construction of or on the Property and/or Improvements, except to the extent such Claim is based solely on the gross negligence or willful misconduct of Ground Lessor or any Ground Lessor Indemnitees during the Term (other than gross negligence in connection with the exercise by Ground Lessor of its rights after an Event of Ground Lessee's Default), (ii) any condition of the Property or the Improvements, or, to the extent Legal Requirements require Ground Lessor, Ground Lessee or any other occupant or



user of the Property or Improvements to maintain such areas, any street, curb or sidewalk immediately adjoining the Property, or of any vaults, passageways or spaces therein or appurtenant thereto, except to the extent such Claim is based solely on the gross negligence or willful misconduct of Ground Lessor or any Ground Lessor Indemnitee during the Term (other than gross negligence in connection with the exercise by Ground Lessor of its rights after an Event of Ground Lessee's Default), (iii) any breach or default on the part of Ground Lessee in the performance of any covenant or agreement on the part of Ground Lessee to be performed pursuant to the terms of this Lease, or pursuant to the terms of any Qualifying Sublease, and (iv) any act or omission of Ground Lessee, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury, death or damage whatsoever caused to or by any Person and occurring in or about the Property and Improvements, or upon or under any street, curb or sidewalk immediately adjoining the Property, or of any vaults, passageways or spaces therein or appurtenant thereto. Ground Lessee shall also indemnify and save harmless Ground Lessor Indemnitees against and from any and all expenses (including reasonable attorneys' fees and court costs) incurred on account of any such Claim. In case any action or proceeding be brought against any Ground Lessor Indemnitee by reason of any such Claim, Ground Lessee, upon notice from Ground Lessor, shall defend such action or proceeding by counsel approved by Ground Lessor in writing, which approval shall be reasonably granted or denied within fifteen (15) days of request therefor, but no approval of counsel shall be required in each and every instance where the Claim is defended by counsel of an insurance carrier obligated to defend such Claim. Should any Claim be made against Ground Lessor or an action or proceeding be brought against it as set forth in this Section 8.10, Ground Lessor shall give Ground Lessee written notice thereof so as to enable Ground Lessee to defend such Claim, action or proceeding. Provided that Ground Lessee is defending an action or proceeding in accordance with this Section 8.10, Ground Lessor shall not enter into any settlement of such action or proceeding without the approval of Ground Lessee, such approval not to be unreasonably withheld, conditioned or delayed. Nothing set forth in this Section 8.10 shall require Ground Lessee to indemnify Ground Lessor for any Claim with respect to which Ground Lessor indemnifies Ground Lessee under this Lease. Ground Lessee hereby waives, releases and forever discharges Ground Lessor from any and all Claims related to any physical damage to the Improvements, regardless of Ground Lessor's negligence or fault. For purposes of the indemnities contained in this Section 8.10, the term "Ground Lessor Indemnitees" shall include Ground Lessor's tenants and their subtenants.

**8.11 Certificate of Ground Lessor's Insurance.** Ground Lessor shall maintain commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Property and Improvements, with limits of Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, which may be arranged through a combination of primary and excess policies. Such insurance shall name Ground Lessee and the Qualifying Mortgagee as additional insureds, shall be written on an occurrence form (i.e., not a claims-made form), and shall have coverage for (i) completed operations liability, (ii) independent contractor liability and (iii) blanket contractual liability. After any written request by Ground Lessee, Ground Lessor shall provide to Ground Lessee a certificate of each insurance policy or policies maintained by Ground Lessor.



## 9. CASUALTY

**9.1 Notice of Casualty.** In the event of any damage to the Property or Improvements by reason of fire or other casualty, Ground Lessee shall give immediate notice thereof to Ground Lessor.

**9.2 Damage.** If, following Construction Commencement, the Improvements, or the machinery, fixtures and equipment placed therein by Ground Lessee, shall be damaged or destroyed by fire or other casualty, Ground Lessee shall commence, as soon as is reasonable in the circumstances, and continue thereafter diligently and continuously, but in no event for a term longer than thirty-six (36) months from the date of the casualty (subject to one day of extension for each day of delay due to Force Majeure Events or Ground Lessor Delay, provided that Ground Lessee promptly notifies Ground Lessor of the existence of such Force Majeure Event or Ground Lessor Delay and identifies the same as such to Ground Lessor), to restore the same as nearly as possible to the condition they were in immediately prior to such damage or destruction. Ground Lessee has an absolute liability hereunder timely to commence and complete restoration of the damaged or destroyed Ground Lessee Improvements irrespective of whether the insurance proceeds received, if any, are adequate to pay for said restoration.

**9.3 Disposition of Insurance Proceeds.** If the proceeds of fire or casualty insurance are less than Two Million Dollars (\$2,000,000.00) and no Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion of all of the Initial Improvements no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists and Ground Lessee is not otherwise then in default under this Lease, then such proceeds shall be paid to Ground Lessee for application in accordance with this Article IX. If the proceeds of fire or casualty insurance are equal to or greater than Two Million Dollars (\$2,000,000.00), or an Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, any petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion of all of the Initial Improvements any petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists or Ground Lessee is otherwise then in default under this Lease, such proceeds shall be made payable to any Qualifying Mortgagee or, if provided in the applicable Qualifying Mortgage, an insurance trustee, provided that the Qualifying Mortgagee or such insurance trustee is obligated to hold such insurance proceeds separate and apart from its own funds and to apply the same to the repair, restoration, and rebuilding of the Improvements (the "Repair Work"). If the proceeds of fire or casualty insurance are equal to or greater than Two Million Dollars (\$2,000,000.00) and there is not a Qualifying Mortgagee, then such proceeds shall be deposited with an insurance trustee that is an Institutional Lender and shall be disbursed to Ground Lessee in accordance with reasonable disbursement procedures commonly found in construction loans (which shall include any retainage required under any construction contract for the Repair Work). Whether held by a Qualifying Mortgagee or an insurance trustee, such proceeds shall be paid out from time to time to Ground Lessee as such Repair Work progresses, upon the written request of Ground Lessee. If insurance proceeds are not sufficient to restore or rebuild the Improvements to their prior condition, Ground Lessee shall nonetheless,



at its own cost and expense, provide the funds necessary to rebuild or restore the Improvements to their prior condition prior to use of insurance proceeds for such purpose.

#### **9.4 Damage during Last Lease Years.**

9.4.1 Notwithstanding any other provision of this Article IX, if any damage or casualty to the Improvements shall occur within the five (5) Lease Years prior to the Expiration Date, and the cost of restoring the Improvements shall exceed fifty percent (50%) of the replacement cost of the entire Improvements, then Ground Lessee shall have the right to terminate this Lease. Ground Lessee shall exercise such right by written notice delivered to Ground Lessor on or before the date that is ninety (90) days after the occurrence of such damage or casualty. Such termination shall be effective at such time as the following conditions shall have been satisfied: (i) such termination shall be approved in writing by any Qualifying Mortgagee, (ii) Ground Lessee shall have performed its obligations under Section 9.4.2, and (iii) Ground Lessee shall have performed its obligations under Section 9.4.3. If the conditions set forth in the foregoing clauses (i) through (iii) shall not have been satisfied by the date that is one (1) year after Ground Lessee's written notice of termination, then such notice shall be deemed rescinded, this Lease shall continue in full force and effect and Ground Lessee shall restore the Improvements in accordance with this Article IX.

9.4.2 If Ground Lessee provides written notice of termination of this Lease pursuant to Section 9.4.1, then at the option of Ground Lessor, Ground Lessee, at its sole cost and expense (subject to reimbursement as described in Section 9.4.4.), shall either (i) demolish all Improvements, or (ii) safeguard and secure the Improvements so that they do not present any imminent danger to person or property. Ground Lessor shall exercise such option within two (2) months after such notice.

9.4.3 If Ground Lessee provides written notice of termination of this Lease pursuant to Section 9.4.1, then Ground Lessee, at its sole cost and expense, shall terminate all Qualifying Subleases and extinguish all rights of Qualifying Subtenants to require the restoration of all or any portion of the Improvements. At the option of Ground Lessor, Ground Lessee shall use commercially reasonable efforts to prevent the termination of such Qualifying Subleases, provided that Ground Lessor shall agree to indemnify Ground Lessee from any liabilities to the Qualifying Subtenants thereunder from and after the date of termination of this Lease. Ground Lessor shall exercise such option within two (2) months after such notice.

9.4.4 If this Lease terminates pursuant to Section 9.4.1, then the proceeds of insurance shall be held by an Institutional Lender as insurance trustee pending termination of this Lease, and upon such termination shall be disbursed as follows: (i) first, to Ground Lessee to reimburse Ground Lessee for the out-of-pocket costs incurred by Ground Lessee pursuant to Section 9.4.2, if any, (ii) second, to any Qualifying Mortgagee, the amount of the outstanding indebtedness under its Qualifying Mortgage, but not more than an amount equal to the value of the Ground Lessee's Leasehold Estate at the time such insurance proceeds are paid, (iii) third, to Ground Lessor, an amount equal to the value of the Fee Estate at the time such insurance proceeds are paid, (iv) fourth, to Ground Lessee, an amount equal to the value of the Leasehold Estate at the time such insurance proceeds are paid and (v) the balance, to Ground Lessor.



**9.5 Ground Lessee's Continuing Liability.** Except as provided in Section 9.4, Ground Lessee's obligation to pay the Base Rent, all Additional Rent and all other charges payable by Ground Lessee under this Lease, shall not be affected by any damage or destruction of the Improvements by fire or other casualty.

**9.6 Proof of Loss; Insurance Negotiations.** Whenever any Improvements or any part thereof shall have been damaged or destroyed, Ground Lessee shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Provided that no Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion of all of the Initial Improvements no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists and Ground Lessee is not otherwise then in default under this Lease, Ground Lessee shall have the right to conduct all insurance settlement negotiations. Provided that Ground Lessee is acting in good faith with respect thereto and Ground Lessee is not then in default under this Lease, Ground Lessee shall have the right to make a final settlement binding upon all parties having an interest therein, except as otherwise provided in Section 8.4.3 and except during the last five (5) Lease Years prior to the Expiration Date, in which event Ground Lessor and Ground Lessee shall jointly exercise such rights. The party not conducting such negotiations and settlement agrees to cooperate with the other party in such negotiations and settlement. In any event, Ground Lessee shall furnish Ground Lessor with a reasonable estimate of the amount of the prospective insurance recovery promptly after such information is available to Ground Lessee, and from time to time to furnish updated estimates thereof to Ground Lessor. Ground Lessee shall keep Ground Lessor apprised of all settlement negotiations and afford Ground Lessor an opportunity to review all settlement proposals prior to acceptance by Ground Lessee or a Qualifying Mortgagee.

## **10. CONDEMNATION**

**10.1 Taking of Entire Property.** In the event that the Property and Improvements (or such portion thereof as shall, in the opinion of Ground Lessor and Ground Lessee render it economically unfeasible to effect restoration thereof) shall either: (i) be taken for any public use or purpose by the exercise of the power of eminent domain, or (ii) be conveyed by Ground Lessor and/or Ground Lessee acting jointly to avoid proceedings of such taking, the Rent and Additional Rent shall be prorated and paid by Ground Lessee to the date of such taking or conveyance and this Lease shall terminate and become null and void as of the date of such taking, or conveyance or final decision, as the case may be.

**10.2 Distribution of Award on Taking of Entire Property.** If this Lease is terminated pursuant to Section 10.1, the award or awards or damages allowed to Ground Lessor and Ground Lessee shall be paid as follows: (i) Ground Lessor shall be paid from the award an amount which shall be allocated to and represented by the value of Ground Lessor's Fee Estate and (ii) Ground Lessee shall be paid an amount which shall be allocated to and represented by the value of Ground Lessee's Leasehold Estate, in both cases as found by the court or jury in its condemnation award without any priority to either (subject, however, to the right of the parties



hereto to appeal such finding and all costs of appeal shall be borne by the party seeking such appeal). If no separate awards are obtained, then the total award shall be paid to Ground Lessor and Ground Lessee in the same proportion as the then fair market value of the interest of Ground Lessor and Ground Lessee so taken (as described and defined in this Section). If the parties cannot agree on the fair market value of their respective interests, then the court which entered the award shall be requested to make such determination. Any Leasehold Mortgage shall be paid out of the award or payment to Ground Lessee, and Ground Lessor shall have no liability therefor.

**10.3 Partial Taking.** In the event that less than all of the Property and Improvements shall be taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by Ground Lessor and Ground Lessee acting jointly to avoid proceedings of such taking, and Ground Lessor and Ground Lessee shall be of the good faith opinion that it is economically feasible to effect restoration thereof, then this Lease and all the covenants, conditions and provisions hereunder shall be and remain in full force and effect as to all of the Property and Improvements not so taken or conveyed (except as provided in Section 10.5). Ground Lessee shall, to the extent condemnation proceeds are made available to it pursuant to the terms thereof, remodel, repair and restore the Improvements so that they will be comparable to the Improvements prior to the condemnation taking into consideration the fact of the condemnation; provided, however, that in so doing Ground Lessee shall not be required to expend more than the amount of any such award actually received by Ground Lessee less all costs and expenses (including reasonable attorneys' fees) incurred in the collection of same.

**10.4 Distribution of Award on Partial Taking.** In the event of a partial taking under Section 10.3, the award or awards of damages allowed to Ground Lessor and Ground Lessee shall be paid to and received by the parties as follows: (i) first, there shall be paid to Ground Lessee the amount required to complete the remodeling and repairs to the Improvements pursuant to Section 10.3; and (ii) second, there shall be paid to Ground Lessor the value of the portion of the Ground Lessor's Fee Estate, so taken or conveyed and Ground Lessee shall be paid the value of the Ground Lessee's Leasehold Estate so taken or conveyed, in both cases as found by the court or jury in its condemnation award, or if no such separate awards are obtained, such award shall be paid to Ground Lessee and Ground Lessor in the same proportion as the then fair market value of Ground Lessor's Fee Estate and Ground Lessee's Leasehold Estate so taken or conveyed. If the parties cannot agree on the fair market value of their respective interests then the court which entered the award shall be requested to make such determination.

**10.5 Adjustment of Rent Upon Partial Taking.** In the event of a partial taking under Section 10.3, then Rent and Additional Rent in respect of the portion of the Property and Improvements so taken shall be paid by Ground Lessee to the date of such taking or conveyance and after such date the Base Rent and the Administrative CAM for the remainder of the Property and Improvements shall be reduced by such an amount as may be, in good faith, agreed upon in writing by the parties hereto.

**10.6 Taking for Temporary Use.** If, by the exercise of the power of eminent domain or under threat thereof, the whole or any part of the Property and Improvements shall be taken for temporary use, all awards or other payments shall be paid to Ground Lessee alone except: (i) if any portion of any such award or payment on account of a taking for temporary use is made by



reason of any damage to or destruction of any portion of the Improvements, such portion shall be applied to pay the cost of restoration; (ii) that portion, if any, of the award or payment on account of a taking for temporary use that relates to a period beyond the date of expiration of the Term; and (iii) all payments, payment, or date of payment of Rent and Additional Rent by Ground Lessee shall continue as if no condemnation has taken place.

**10.7 Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding described in this Article X shall be paid in accordance with the law governing same, as determined by the court.

## **11. MAINTENANCE AND REPAIRS**

### **11.1 Maintenance.**

11.1.1 During the Term, Ground Lessee, at its sole cost and expense, shall maintain and repair all portions of the Property and the Improvements consistent with Applicable Standards and in material compliance with all applicable Legal Requirements, and shall promptly cause any condition the subject of any notice of violation or similar notification issued by any applicable Governmental Authority to be remediated in a timely manner. Ground Lessee shall not permit any physical waste to the Property or Improvements, and shall, except as provided in Articles IX and X, at Ground Lessee's sole cost and expense, make all repairs and replacements, structural or otherwise, required to maintain the foregoing components of the Property and the Improvements in accordance with Applicable Standards at all times during the Term.

11.1.2 Ground Lessee shall maintain all portions of the Property, all Improvements located thereon, and the sidewalks, curbs, driveways, entrances, passageways, alleys and, to the extent required by Legal Requirements, all areas adjoining the same, in a clean, neat and orderly condition, free of dirt, rubbish, and unlawful obstructions, and in accordance with Applicable Standards at all times during the Term.

11.1.3 Ground Lessee shall comply with, or it shall cause to be complied with, all requirements of all policies of public liability, fire or other insurance at any time in force with respect to the Property and Improvements at all times during the Term.

### **11.2 Compliance with Legal Requirements.**

11.2.1 During the Term, Ground Lessee, at its sole cost and expense, shall promptly comply with all Legal Requirements with respect to Property and Improvements, including without limitation the condition, maintenance, use, occupation, improvement and alteration of the Property and Improvements. Without limiting the generality of the foregoing, Ground Lessee shall comply with any and all terms and conditions contained in the Land Use Approvals. Notwithstanding the foregoing, if during the last five (5) years of the Term, Ground Lessee is required to make any capital repair or replacement to the Property or Improvements to comply with Legal Requirements, it shall obtain Ground Lessor's prior written consent prior to making such capital repair or replacement and it shall provide Ground Lessor with an estimate of the cost of making such repair or replacement in connection with its consent request. Ground Lessor shall grant or deny its consent within fifteen (15) days of receipt of the foregoing consent



request and cost estimate. If consent is granted by Ground Lessor, then Ground Lessee shall have the right to offset against any Rent due an amount equal to the unamortized cost (amortized on a straight line basis over the useful life of such repair or replacement) of such repair or replacement. If consent is not obtained or is otherwise not given by Ground Lessor, then Ground Lessee shall have the right to terminate this Lease by written notice delivered to Ground Lessor, in which event this Lease shall terminate and all right, title and interest of Ground Lessee hereunder shall expire, and Ground Lessee shall surrender the Property and Improvements to Ground Lessor. If Ground Lessee does not exercise such right to terminate, then Ground Lessee shall be solely responsible for the full cost of such capital repair or replacement.

11.2.2 Ground Lessee shall have the right to contest, by appropriate legal proceedings, in the name of Ground Lessee or Ground Lessor or both, without costs or expense to Ground Lessor, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 11.2.1 above; provided however, any contest made in the name of Ground Lessor or the names of Ground Lessor and Ground Lessee shall be subject to Ground Lessor's prior written consent, which consent may be withheld or granted in Ground Lessor's sole discretion within fifteen (15) days of request therefor. If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance without the incurrence of a lien, charge or liability of any kind against the Project or Ground Lessee's Leasehold Estate and without subjecting Ground Lessee or Ground Lessor to any criminal liability of whatsoever nature for failure so to comply therewith, Ground Lessee may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch, and if any lien, charge or civil liability is incurred by reason of non-compliance, Ground Lessee may nevertheless make such contest and delay compliance as provided above, provided that Ground Lessee furnishes to Ground Lessor security, reasonably satisfactory to Ground Lessor, against any loss or injury by reason of such non-compliance or delay therein and prosecutes the contest aforesaid with due diligence. Ground Lessor shall confirm whether such security is satisfactory within fifteen (15) days of Ground Lessee's written submission thereof. Notwithstanding the foregoing provisions of this Section, if a Qualifying Mortgagee shall be the tenant under this Lease, such Qualifying Mortgagee shall not be required to furnish the security required under this Section. Ground Lessor agrees to execute and deliver, at no cost to Ground Lessor, any papers that may be reasonably necessary or proper to permit Ground Lessee to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

**11.3 Repair by Ground Lessor.** If an Event of Ground Lessee's Default shall exist with respect to any maintenance or repairs required under this Lease, then Ground Lessor and its representatives may enter the Property and Improvements for purposes of performing such maintenance and repairs. Nothing in this Lease shall create or imply a duty on the part of the Ground Lessor to perform such maintenance or repairs, and performance thereof by Ground Lessor shall not constitute a waiver of Ground Lessee's default in failing to perform the same. All maintenance and repairs performed by Ground Lessor in accordance with this Section 11.3 shall be at the sole risk and expense of Ground Lessee, and Ground Lessee shall promptly reimburse Ground Lessor for all reasonable out-of-pocket expenses incurred by Ground Lessor in connection with such maintenance and repairs, except that any such maintenance and repairs shall be performed in a good workmanlike manner and in accordance with Applicable Standards



and Legal Requirements. In addition, any such Work shall be performed subject to the rights of any subtenant or occupants of the Building.

**11.4 Payment for Utilities.** During the Term, Ground Lessee, at its sole cost and expense, shall pay or cause to be paid directly to the applicable utility providers, in addition to the Impositions as set forth in Article VII, all charges for gas, electricity, light, heat, power, water, sewer, telephone, cable or other communication service, and any other utilities rendered or supplied upon or in connection with the Property or Improvements, and shall indemnify Ground Lessor and save Ground Lessor harmless from and against any all liability or damages on account thereof. To the extent any statement for such services covers any period not within the Term, such statement shall be pro rated such that Ground Lessee shall pay only such portion that is attributable to the period within the Term.

**11.5 No Ground Lessor Services.** Notwithstanding any other provision in this Lease, Ground Lessor shall not be required to furnish any services or facilities or to make any repairs, alterations, replacements or improvements whatsoever in or to the Property or Improvements. Ground Lessee hereby assumes the full and sole responsibility for the condition, operations, repair, replacement, and maintenance and management of the Property and Improvements, except as otherwise expressly set forth in this Lease or in the Development Agreement.

## **12. ASSIGNMENT, SUBLEASING AND OTHER TRANSFERS**

**12.1 Prohibitions on Transfers.** This Lease is granted to Ground Lessee solely for the purpose of development of the Property and construction of the Initial Improvements and their subsequent use in accordance with the terms hereof. Ground Lessee recognizes that, in view of the importance of the development of the Property and construction of the Initial Improvements to Ground Lessor, the qualifications and identity of Ground Lessee and its members and managers are of particular concern to Ground Lessor. Ground Lessee further recognizes that it is because of such qualifications and identity that Ground Lessor is entering into this Lease with Ground Lessee, and, in so doing, is further willing to accept and rely on the obligations of Ground Lessee for the faithful performance of all undertakings and covenants by it to be performed. Thus, except as permitted pursuant to Section 12.2, without the prior written consent of Ground Lessor, which consent Ground Lessor shall grant or deny in its sole and absolute discretion within thirty (30) days of request therefor (subject to Section 19.14), no Transfer may or shall be made, suffered or created, including any involuntary transfer by court, government agency order or other operation of law. Any consent by Ground Lessor to a Transfer shall not waive any of Ground Lessor's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect. In addition, notwithstanding Section 12.2 (iv), without Ground Lessor's prior written consent, which consent Ground Lessor shall grant or deny in its sole and absolute discretion within thirty (30) days of request therefore (subject to Section 19.14), Ground Lessee shall not Transfer the Leasehold Estate to a Qualified Transferee pursuant to Section 12.2(iv) until the later of (i) the full performance by Wexford S&T under the Parking Agreement and (ii) the earlier of that date that is (a) three (3) years after Stabilization or (b) five (5) years after the date Final Completion of all of the Initial Improvements is achieved.



**12.2 Permitted Transfers.** The following Transfers shall be permitted hereunder without the consent of Ground Lessor (each a "Permitted Transfer"): (i) provided no Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion of all of the Initial Improvements no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists and Ground Lessee is not otherwise then in default under this Lease, the grant of any Leasehold Mortgage; (ii) any Transfer directly resulting from the foreclosure of a Qualifying Mortgage or the granting of a deed in lieu of foreclosure of a Qualifying Mortgage, provided that such Transfer is of the entire Leasehold Estate and provided further that such Transfer, purchase or grant is in accordance with the terms and conditions of Article XIII; (iii) provided no Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion of all of the Initial Improvements no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists and Ground Lessee is not otherwise then in default under this Lease, Qualifying Subleases; (iv) provided no Event of Ground Lessee's Default under Sections 14.1.2, 14.1.4, 14.1.5, 14.1.6, 14.1.7, 14.1.8, 14.1.9, 14.1.12 or 14.1.13 then exists, no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.10 then exists, if prior to Final Completion no petition, proceeding, appointment, assignment, execution or attachment of the nature described in Section 14.1.11 then exists and Ground Lessee is not otherwise then in default under this Lease, any Transfer to a Qualified Transferee; (v) the grant of security interests in personal property, trade fixtures and trade equipment not otherwise in connection with a grant of a Leasehold Mortgage; and (vi) the granting of any easement to a utility provider or Governmental Authority in connection with the development of the Initial Improvements. In connection with any Transfer under (iv) above, such Transfer shall not be binding upon Ground Lessor or be binding, have any force or effect, either in law or in equity, or convey any interest in the Leasehold Estate, unless and until there shall be delivered to Ground Lessor in form and substance approved by Ground Lessor (which approval shall not be unreasonably withheld), a duplicate original of the instrument of assignment executed and acknowledged by the assignor and assignee, under which the assignee shall have assumed, for the benefit of Ground Lessor, all obligations of the Ground Lessee under this Lease, including all liabilities and obligations accruing prior to the effective date of such assignment, together with such evidence as Ground Lessor may reasonably require to confirm that the assignee is empowered and authorized to execute, deliver and perform its obligations under such assumption. If Ground Lessor fails to send written notice of disapproval to Ground Lessee within thirty (30) days after Ground Lessor's receipt of written request for approval, then Ground Lessor shall be deemed to have granted approval. Ground Lessee's written notice requesting approval must include the following statement conspicuously printed in boldfaced type immediately below the addressee line on the first page of the notice: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS THIRTY (30) DAYS AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR APPROVAL OF THE REQUESTS SET FORTH IN THIS LETTER.**

**12.3 Liability of Assignor after Transfer.** The Ground Lessee shall remain primarily liable under this Lease notwithstanding any Permitted Transfers.



#### **12.4 Qualifying Subleases.**

12.4.1 Ground Lessee shall have the right at any time and from time to time to enter into one or more subleases of all or any part of the Property or the Improvements which provide that such sublease is subject to the terms of this Lease including the Permitted Uses (each, a "Qualifying Sublease"). Throughout the Term, Ground Lessee shall use its good faith and diligent efforts to sublease the Improvements to Qualifying Subtenants in accordance with the Intended Uses.

12.4.2 Notwithstanding Section 12.4.1, Ground Lessee shall not enter into any Qualifying Sublease that has a term (including renewal options) that extends beyond the Expiration Date, unless otherwise approved in writing by Ground Lessor in its sole and absolute discretion.

12.4.3 Notwithstanding Section 12.4.1, Ground Lessor's prior written approval shall be required for any Qualifying Sublease that is not consistent with the leasing guidelines set forth on Schedule 12.4.3 attached hereto ("Leasing Guidelines"). Ground Lessor shall grant or deny such approval within thirty (30) days of written request therefor. Ground Lessee and Ground Lessor may each from time to time propose modifications to the Leasing Guidelines, subject to the other's approval, in order that the Leasing Guidelines generally reflect current market terms for lease transactions for properties located in the Health District, Central Business District or Brickell areas of Miami-Dade County, Florida that are generally comparable to the Improvements; provided however, the Leasing Guidelines shall not be amended to include restrictions on rent or similar economic terms. Ground Lessee and Ground Lessor shall not unreasonably withhold, condition or delay such approval, and such approval shall be granted or denied within thirty (30) days of request therefor.

#### **12.5 Attornment and Recognition of Qualifying Subtenants.**

12.5.1 Each Qualifying Sublease shall provide the following:

- (a) if for any reason this Lease is terminated, then at Ground Lessor's request the Qualifying Subtenant under such Qualifying Sublease shall attorn to Ground Lessor and shall recognize Ground Lessor as such Qualifying Subtenant's landlord under the Qualifying Sublease; and
- (b) the Qualifying Subtenant under such Qualifying Sublease shall execute and deliver, upon the request of Ground Lessor, an instrument evidencing its agreement to attorn to Ground Lessor; and
- (c) the Qualifying Subtenant under such Qualifying Sublease waives the provisions of any statute or rule of law which may give such Qualifying Subtenant any right of election to terminate such Qualifying Sublease or to surrender possession of its demised Property in the event this Lease terminates, and agrees that such



Qualifying Sublease shall not be affected in any way whatsoever by such termination.

12.5.2 If this Lease shall terminate by reason of an Event of Ground Lessee's Default, Ground Lessor shall recognize the right to possession granted to any Qualifying Subtenant under any Qualifying Sublease that is permitted under this Article XII, subject to the following:

- (a) Ground Lessor shall be required to provide only those services that (i) are generally and customarily provided in buildings comparable to the Improvements in the Central Business District and Brickell areas of Miami-Dade County, Florida, but not in the event of any Force Majeure Event or (ii) are expressly approved by Ground Lessor in a Non-Disturbance Agreement executed in connection with the applicable Qualifying Subtenant.
- (b) Ground Lessor shall not be obligated to construct or pay for any improvements required under any Qualifying Sublease, or pay any allowances, concessions or other amounts that may be provided for in any Qualifying Sublease; provided, however, if Ground Lessor fails to construct or pay for such improvements, or pay any such allowances, concessions or other amounts, then the subtenant under the Qualifying Sublease shall have the right to terminate the Qualifying Sublease.
- (c) Ground Lessor shall not be bound by any payment of rent under any Qualifying Sublease for more than one (1) month prior to its due date.
- (d) Ground Lessor shall not be liable for damages for any breach, act or omission of Ground Lessee or any other prior landlord under any Qualifying Sublease, or subject to any offsets or defenses which the Qualifying Subtenant may have against Ground Lessee or any other prior landlord under its Qualifying Sublease, except to the extent (A) that such offsets or defenses accrue in accordance with the terms of the Qualifying Sublease from and after the date on which Ground Lessor succeeds to the interest of Ground Lessee under the Lease (the "Succession Date"), (B) the basis for such offsets or defenses continue to exist from and after the Succession Date; provided that Ground Lessor receives notice thereof in accordance with the Qualifying Sublease, and (C) Qualifying Subtenant gives prompt notice to Ground Lessor of the continuing act or omission promptly after Qualifying Subtenant is notified that the Lease has been terminated; provided, however, that Ground Lessor's liability with respect to those matters described in clauses (B) and (C) shall be limited to the effects of the continuation of such act or omission after the Succession Date and shall not



include any liability of any prior landlord (including Ground Lessee) which accrued prior to the Succession Date.

- (e) Ground Lessor shall not be responsible for the return of any security deposit furnished to Ground Lessee or any other prior landlord that has not been received by Ground Lessor.
- (f) Ground Lessor shall not be obligated to recognize the right to possession granted to any Qualifying Subtenant under any Qualifying Sublease if such Qualifying Subtenant is in default beyond the expiration or applicable notice and cure periods under such Qualifying Sublease, and in no event shall Ground Lessor be obligated to recognize any right to possession beyond the Expiration Date, unless specifically agreed to in a separate document executed by an authorized officer of Ground Lessor.

12.5.3 Within forty-five (45) days of receipt of a written request from Ground Lessee, Ground Lessor shall enter into a subordination, non-disturbance and attornment agreement with a Qualifying Subtenant in form and substance acceptable to Ground Lessor, in its sole discretion, and Qualifying Subtenant ("Non-Disturbance Agreement") that confirms the matters set forth in Sections 12.5.1 and 12.5.2.

12.5.4 Within thirty (30) days of receipt of a written request from Ground Lessor from time to time during the Term, Ground Lessee shall provide to Ground Lessor (i) a correct and complete copy of each Qualifying Sublease then in effect, and (ii) a rent roll for the Property that identifies for each Qualifying Sublease then in effect (a) the Qualifying Subtenant, (b) the premises demised, (c) the term, (d) the amount of rent and other charges, and (e) such other matters as Ground Lessor may reasonably request.

**12.6 Acceptance of Rent from Transferee.** The acceptance by Ground Lessor of the payment of Rent following any Transfer prohibited by this Article XII shall not be deemed to be a consent by Ground Lessor, nor shall the same be deemed to be a waiver of any right or remedy of Ground Lessor under this Lease.

**12.7 Event of Bankruptcy.** If this Lease is assigned to any person or entity pursuant to the provision of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. or any successor thereto, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Ground Lessor, shall be and remain the exclusive property of Ground Lessor, and shall not constitute the property of Ground Lessee or of the estate of Ground Lessee within the meaning of such statute. Any and all monies or other considerations constituting Ground Lessor's property under this Section not paid or delivered to Ground Lessor shall be held in trust for the benefit of Ground Lessor and shall be promptly paid or delivered to Ground Lessor. Any person or entity to which this Lease is assigned pursuant to the provisions of such statute shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment, including, but not limited to, the obligation to use the Property and Improvements solely for the Intended Uses and any general office uses that may be permitted in accordance



with Section 5.1.2. Any use of the Property or Improvements in violation of Section 5.1 shall be an Event of Ground Lessee's Default under Section 14.1.2; it being the intent of this Lease that the Property and Improvements be used at all times exclusively for the Intended Uses and any general office uses that may be permitted in accordance with Section 5.1.2.

### **13. QUALIFYING MORTGAGEES' RIGHTS**

**13.1 Applicability of Article.** For so long as any Qualifying Mortgage remains unsatisfied of record, the provisions of this Article XIII shall apply with respect to such Qualifying Mortgage for the benefit of the Qualifying Mortgagee that is the holder of such Qualifying Mortgage. Ground Lessor and Ground Lessee expressly intend and agree that the provisions of this Article XIII and such other provisions of this Lease which, by their terms, are for the benefit of Qualifying Mortgagees, are intended for the benefit of and enforceable only by Qualifying Mortgagees and not by other Leasehold Mortgagees.

**13.2 No Right to Encumber.** Ground Lessee shall not have the right to encumber or subordinate the fee interest of Ground Lessor in the Property, the reversionary interest of Ground Lessor in the Property and the Improvements, or the Base Rent, Additional Rent or other amounts due Ground Lessor under this Lease.

#### **13.3 Rights of Qualifying Mortgagees.**

**13.3.1 Notice of Default; Opportunity to Cure.** Ground Lessor hereby agrees with and for the benefit of each Qualifying Mortgagee: (i) when giving notice to Ground Lessee with respect to any default under this Lease or any exercise of any right to terminate this Lease, Ground Lessor will also give a copy of such notice to each Qualifying Mortgagee at the address of each Qualifying Mortgagee furnished to Ground Lessor; (ii) in case Ground Lessee shall default in respect of any of the provisions of this Lease, any Qualifying Mortgagee shall have the right, but not the obligation, to cure such default whether the same consists of the failure to pay Base Rent, Additional Rent or the failure to perform any other covenant which Ground Lessee is required to perform under this Lease, and Ground Lessor shall accept performance by or on behalf of such Qualifying Mortgagee as though, and with the same effect as if, the same had been done or performed by Ground Lessee. A Qualifying Mortgagee will have a period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given to Ground Lessee under this Lease in respect of the specified default after the giving of such notice to Ground Lessee, plus an additional period of ten (10) days with respect to monetary defaults and an additional sixty (60) days with respect to non-monetary defaults. In the event of a default which is curable without Qualifying Mortgagee being in possession and control of the Improvements, but cannot reasonably be cured within said period, the period of time for cure shall be extended for so long as any Qualifying Mortgagee is diligently and continuously proceeding to attempt to cure such default, provided that the Qualifying Mortgagee has begun proceedings to cure the default within the said period. In no event shall a default due to a failure to pay Base Rent or Additional Rent be deemed a default which cannot be reasonably cured within such additional period of ten (10) days; (iii) with respect to any nonmonetary default by Ground Lessee under this Lease that is not susceptible of being cured by the Qualifying Mortgagee without being in possession and control of the Improvements, Ground Lessor shall take no action to terminate this



Lease on account of such default if, within thirty (30) days after notice of the default from Ground Lessor (subject to any bankruptcy stays), the Qualifying Mortgagee shall have commenced appropriate proceedings to obtain possession of Property (including possession by a receiver) or to foreclose the Leasehold Mortgage or otherwise to acquire the Leasehold Estate, and shall thereafter be prosecuting the same to completion in good faith, with diligence and continuity (subject to any bankruptcy stays); provided, however, that (A) Ground Lessor shall not be precluded from exercising any rights or remedies with respect to any other default by Ground Lessee under this Lease during the pendency of such foreclosure proceedings; (B) during the period of Ground Lessor's forbearance, the Qualifying Mortgagee shall comply with such of the terms, covenants and conditions of this Lease as are then susceptible of compliance by the Qualifying Mortgagee; and (C) if and after the Qualifying Mortgagee obtains possession of Property or acquires Ground Lessee's interest under this Lease, the Qualifying Mortgagee shall promptly commence and diligently pursue the curing of such defaults.

**13.3.2 Right to New Lease.** Ground Lessor agrees that in the event of termination of this Lease for any reason (other than a default by Ground Lessee beyond the applicable cure period, for which Qualifying Mortgagee was provided notice and an opportunity to cure in accordance with this Article), that Ground Lessor will enter into a new lease of the Property with Qualifying Mortgagee for the remainder of the Term, effective as of the date of such termination, at the rent and upon the terms, provisions, covenants and agreements as herein contained, provided: (i) Qualifying Mortgagee shall make written request upon Ground Lessor for such new lease within thirty (30) days after Ground Lessor has given Qualifying Mortgagee notice of such termination; (ii) said written request shall be accompanied by payment of all past due Rents owing to Ground Lessor hereunder of which Qualifying Mortgagee shall have been given notice, and, thereafter all Rent shall be maintained current through the time of the execution and delivery of such new lease; (iii) the Qualifying Mortgagee as the lessee under such new lease shall automatically have the same right, title and interest in and to the Property as Ground Lessee had under the terminated Lease.

**13.4 Registration.** No Leasehold Mortgagee shall be a Qualifying Mortgagee unless such Leasehold Mortgagee has been served upon Ground Lessor in the manner provided in this Section 13.5 both a copy of such Leasehold Mortgage and a request for treatment as a Qualifying Mortgagee. Upon Ground Lessee's written request, Ground Lessor will confirm whether such Leasehold Mortgagee is a Qualifying Mortgagee. If Ground Lessor fails to send written notice to Ground Lessee confirming that such Leasehold Mortgage is a Qualifying Leasehold Mortgage within thirty (30) days after Ground Lessor's receipt of written request therefor, then Ground Lessor shall be deemed to have given such confirmation. Ground Lessee's written notice requesting any confirmation must include the following statement conspicuously printed in boldfaced type immediately below the addressee line on the first page of the notice: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS THIRTY (30) DAYS AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR CONFIRMATION OF THE REQUESTS SET FORTH IN THIS LETTER.**

**13.5 Modifications to Lease.** If any prospective Qualifying Mortgagee shall request any modification to this Lease as a condition to such Qualifying Mortgage, Ground Lessor shall have thirty (30) days to respond to such request. Ground Lessor shall not unreasonably withhold its approval of such modification so long as such modification does not (i) affect any economic



term of this Lease, (ii) materially affect the rights, powers, privileges, obligations or liabilities of Ground Lessor, (iii) diminish any obligations, liabilities or covenants of Ground Lessee or (iv) affect Section 5.1. Ground Lessee shall pay all costs, expenses and attorneys' fees incurred by Ground Lessor in connection with the review, negotiation, execution and/or delivery of any such proposed modification regardless of whether Ground Lessor consents to or approves any such modification. If any prospective Mortgagee of Ground Lessor's interest in the Property shall require any modification to this Lease as a condition to its Mortgage, Ground Lessee and any Qualifying Mortgagee shall not unreasonably withhold its approval of such modification so long as such modification does not affect any economic term of this Lease or materially affect the rights, powers, privileges, obligations or liabilities of Ground Lessee.

#### 14. DEFAULT

**14.1 Events of Ground Lessee's Default.** Each of the following shall constitute an Event of Default on the part of Ground Lessee (an "Event of Ground Lessee's Default"):

14.1.1 Ground Lessee shall fail to pay the Base Rent, the Additional Rent, or any other charges on the date the same are due and payable, and such failure shall continue for ten (10) days following written notice from Ground Lessor of such failure.

14.1.2 intentionally deleted

14.1.3 Ground Lessee shall fail to maintain the insurance coverage as required under Article VIII; provided however, so long as there is no lapse in continuous coverage, Ground Lessee shall have a period of ten (10) days following written notice from Ground Lessor of such failure to cure such failure.

14.1.4 If any Transfer shall be consummated except as permitted in Article XII.

14.1.5 Ground Lessee shall fail to perform any term, covenant or condition under Sections 2.3, 2.4, 2.5, 2.6, 3.3, 4.10, 4.11, 6.2, 6.3.4, 6.3.5, 6.3.6, 6.4, 6.5, 7.3, 19.3, 19.5 or 19.10, or under Articles V, IX, XI (except for Ground Lessee's failure to maintain the Property and Improvements consistent with Applicable Standards and Legal Requirements as required under Sections 11.1 and 11.2.1, for which Section 14.1.6 shall apply), XII (except as described in Section 14.1.4, for which no grace, notice or cure period shall apply), XVI or XVII on the date the same is required under this Lease, and such failure shall continue for thirty (30) days following receipt by Ground Lessee of written notice from Ground Lessor of such failure, provided that if (i) such failure is not reasonably susceptible to cure within thirty (30) days, (ii) Ground Lessee commences to cure such failure within such thirty (30) day period and thereafter diligently and continuously prosecutes such cure, (iii) neither Ground Lessee nor Ground Lessor is or may be subject to any criminal liability of whatsoever nature for such failure, (iv) if any expense, cost, lien, charge or civil liability is or may be incurred by reason of such failure, Ground Lessee furnishes to Ground Lessor security, satisfactory to Ground Lessor (and Ground Lessor shall notify Ground Lessee of its satisfaction or dissatisfaction within fifteen (15) days of request therefor), against any such expense, cost, lien, charge or civil liability, (v) if there is any risk that the Property or Leasehold Estate will be sold as a result of such failure, Ground Lessee furnishes a bond, indemnity or other assurance satisfactory to Ground Lessor and (vi) Ground



Lessee indemnifies Ground Lessor from and against any and all Claims resulting from any such failure, then such thirty (30) day period shall be extended by an additional sixty (60) days to permit Ground Lessee to cure such failure. The notice and cure provisions of this Section 14.1.5 apply only to the Events of Ground Lessee's Default described in this Section 14.1.5 and to no other Event of Ground Lessee's Default.

14.1.6 Ground Lessee shall fail to perform any term, covenant or condition under this Lease (other than as described elsewhere in this Section 14.1), and such failure shall continue for thirty (30) days following receipt by Ground Lessee of written notice from Ground Lessor of such failure, provided that (i) if such failure is not reasonably susceptible to cure within thirty (30) days, (ii) if Ground Lessee commences to cure such failure within such thirty (30) day period and thereafter diligently and continuously prosecutes such cure, (iii) neither Ground Lessee nor Ground Lessor is or may be subject to any criminal liability of whatsoever nature for such failure, (iv) if any expense, cost, lien, charge or civil liability is or may be incurred by reason of such failure, Ground Lessee furnishes to Ground Lessor security, satisfactory to Ground Lessor, against any such expense, cost, lien, charge or civil liability, (v) if there is any risk that the Property or Leasehold Estate will be sold as a result of such failure, Ground Lessee furnishes a bond, indemnity or other assurance satisfactory to Ground Lessor and (vi) Ground Lessee indemnifies Ground Lessor from and against any and all Claims resulting from any such failure, then such thirty (30) day period shall be extended for such additional time as is reasonably necessary, but not to exceed three hundred sixty (360) in the aggregate, to permit Ground Lessee, using its continuous diligent and commercially reasonable efforts, to cure such failure. The notice and cure provisions of this Section 14.1.6 apply only to the Events of Ground Lessee's Default described in this Section 14.1.6 and to no other Event of Ground Lessee's Default.

14.1.7 Subject to Force Majeure Events and Ground Lessor Delays, if construction of the Tower Building does not commence by that date that is the later of (i) thirty (30) days after the issuance of the first permit for vertical construction of the Tower Building or (ii) thirty (30) days after the date that the financing contingency set forth in Section 3.1.3 is satisfied or waived, or if construction of the Expansion does not occur by that date that is thirty (30) days after the issuance of the first permit for vertical construction of the Expansion. Ground Lessee shall be deemed to have "commenced construction" of the Tower Building and/or the Expansion, as the case may be, pursuant to this Section 14.1.7, upon its commencement of construction of the foundations of the Tower Building and/or the Expansion, as the case may be.

14.1.8 If Ground Lessee shall voluntarily cease construction of the Initial Improvements for a period in excess of ninety (90) consecutive days.

14.1.9 Subject to Force Majeure Events and Ground Lessor Delays, if Final Completion of all of the Initial Improvements does not occur by the Outside Completion Date; provided however, if Substantial Completion of all of the Initial Improvements is achieved by the Outside Completion Date, and that Ground Lessee in good faith is diligently and continuously proceeding to achieve Final Completion of all of the Initial Improvements, Ground Lessee shall have an additional ninety (90) days to cause Final Completion of all of the Initial Improvements to occur.



14.1.10 If there shall be filed by or against Ground Lessee in any court, pursuant to any statute either of the United States, the State of Florida or of any other state, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Ground Lessee's assets, or Ground Lessee shall make an assignment for the benefit of its creditors, or any execution or attachment shall be issued against Ground Lessee or Ground Lessee's property whereby the Property or Improvements shall be taken or occupied, or attempted to be taken or occupied, by a Person other than Ground Lessee. Notwithstanding the foregoing, if any bankruptcy petition shall be filed against Ground Lessee or any such action set forth in this Section 14.1.10 shall be taken involuntarily against Ground Lessee, Ground Lessee shall have a period of sixty (60) days after the filing of the involuntary petition or the taking of such action to cause same to be dismissed provided that Ground Lessee in good faith immediately commences and diligently prosecutes any and all actions necessary to secure the dismissal of any such petition and the restoration of Ground Lessee to the possession of its assets.

14.1.11 If there shall be filed by or against any Guarantor in any court, pursuant to any statute either of the United States, the State of Florida or of any other state, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of such Guarantor's assets, or any Guarantor shall make an assignment for the benefit of its creditors. Notwithstanding the foregoing, if any bankruptcy petition shall be filed against any Guarantor or any such action set forth in this Section 14.1.11 shall be taken involuntarily against any Guarantor, such Guarantor shall have a period of sixty (60) days after the filing of the involuntary petition or the taking of such action to cause same to be dismissed provided that such Guarantor in good faith immediately commences and diligently prosecutes any and all actions necessary to secure the dismissal of any such petition; provided however, this Section 14.1.11 shall not apply after Final Completion of all of the Initial Improvements.

14.1.12 If any representation or warranty of any Guarantor in the Guaranty or Completion Guaranties shall fail to be correct in any material respect, or any cancellation or revocation of the Guaranty or any Completion Guaranty by any Guarantor; provided however, this Section 14.1.12 shall not apply after Final Completion of all of the Initial Improvements.

14.1.13 If there shall occur an "Event of Default" (as defined in the Development Agreement) on the part of Ground Lessee as "Developer" under the Development Agreement.

#### **14.2 Remedies for Event of Ground Lessee's Default.**

14.2.1 **Prior to Construction Commencement.** If any Event of Ground Lessee's Default occurs prior to the date of Construction Commencement (each, a "Pre-Construction Default"), Ground Lessor may terminate this Lease by giving to Ground Lessee notice of Ground Lessor's election to do so, in which event the Term shall end, and all right, title and interest of Ground Lessee hereunder shall expire on the date stated in such notice, and Ground Lessor shall have the additional rights and remedies set forth in Section 9.2.1 of the Development Agreement. Payment by Ground Lessee to Ground Lessor of the Pre-Construction Liquidated Damages Amount as set forth in the Development Agreement shall be full and complete liquidated damages, and the exclusive and sole right and remedy of Ground Lessor



against Ground Lessee at law or in equity as a result of such Pre-Construction Default, except that as set forth in the Development Agreement Ground Lessor may continue to exercise any and all rights, whether in law or in equity, that Ground Lessor has against Ground Lessee, including, but not limited to suits for damages, with respect to any failure of Ground Lessee to fully comply with (ii) or (iii) of Section 9.2.1. of the Development Agreement. Ground Lessee acknowledges that Ground Lessor's actual damages caused by a Pre Construction Default by Ground Lessee would be difficult to determine precisely and that the Pre Construction Liquidated Damages Amount, as liquidated damages, are a fair and reasonable approximation of the Ground Lessor's actual damages. Ground Lessor hereby waives any right to recover damages (whether actual, consequential, punitive or other) from Ground Lessee as a result of such Pre-Construction Default, other than such Pre-Construction Liquidated Damages Amount and other than with respect to Ground Lessee's failure to fully comply with (ii) or (iii) of Section 9.2.1. of the Development Agreement.

**14.2.2 After Construction Commencement.** If any Event of Ground Lessee's Default occurs after the date of Construction Commencement, Ground Lessor shall have the following rights and remedies, any one or more of which may be exercised without further notice to or demand upon Ground Lessee and which may be pursued successively or cumulatively as Ground Lessor may elect, as may be permitted under applicable law:

- (i) With respect to any Event of Ground Lessee's Default other than those described in Sections 14.1.7, 14.1.8 or 14.1.9, Ground Lessor may re-enter the Project and the attempt to cure the Event of Ground Lessee's Default, in which event Ground Lessee shall, upon demand, reimburse Ground Lessor as Additional Rent for all sums paid by Ground Lessor, and all costs and expenses, including reasonable attorney's fees, incurred by Ground Lessor to cure such Event of Ground Lessee's Default, together with interest thereon at the Default Interest Rate from the respective dates of Ground Lessor's making of each such payment or incurring of each such cost and expense.
- (ii) Ground Lessor may terminate this Lease by giving to Ground Lessee notice of Ground Lessor's election to do so, in which event the Term shall end, and all right, title and interest of Ground Lessee hereunder shall expire, on the date stated in such notice; provided however, if Ground Lessor intends to terminate this Lease based upon an Event of Ground Lessee's Default described in Sections 14.1.7, 14.1.8 or 14.1.9, and at the time of Ground Lessor's notice there is no other Event of Ground Lessee's Default, then Ground Lessee shall have the right to prevent such termination if Redwood, Wexford Equities and/or Wexford S&T fully and timely perform their respective obligations under the Completion Guaranties. If such obligations under the Completion Guaranties are not fully and timely



performed, and such failure continues for a period of thirty (30) days following written notice of such failure from Ground Lessor to Ground Lessee, then the Term shall end, and all right, title and interest of Ground Lessee hereunder shall expire, on the date that is thirty (30) days after the date of Ground Lessor's written notice of such failure.

- (iii) Ground Lessor may terminate the right of Ground Lessee to possession of the Project without terminating this Lease by giving notice to Ground Lessee that Ground Lessee's right to possession shall end on the date stated in such notice, whereupon the right of Ground Lessee to possession of the Project or any part thereof shall cease on the date stated in such notice; provided however, if Ground Lessor intends to terminate such right of possession based upon an Event of Ground Lessee's Default described in Sections 14.1.7, 14.1.8 or 14.1.9, and at the time of Ground Lessor's notice there is no other Event of Ground Lessee's Default, then Ground Lessee shall have the right to prevent such termination if Redwood, Wexford Equities and/or Wexford S&T fully and timely perform their respective obligations under the Completion Guaranties. If such obligations under the Completion Guaranties are not fully and timely performed, and such failure continues for a period of thirty (30) days following written notice of such failure from Ground Lessor to Ground Lessee, then Ground Lessee's right to possession shall end on the date that is thirty (30) days after the date of Ground Lessor's written notice of such failure, whereupon the right of Ground Lessee to possession of the Project or any part thereof shall cease on such date.
- (iv) Ground Lessor may enforce the provisions of this Lease and, with respect to any Event of Ground Lessee's Default described in Section 14.1.13, the Development Agreement, by a suit or suits in equity or at law, including a writ for mandamus, the specific performance of any covenant or agreement contained herein or therein, injunction or similar relief, or for the enforcement of any other appropriate legal or equitable remedy available under applicable law or in equity, including recovery of all moneys due or to become due from Ground Lessee under any of the provisions of this Lease and, with respect to any Event of Ground Lessee's Default under Section 14.1.13, under any of the provisions of the Development Agreement. Further, with respect to any Event of Ground Lessee's Default under Section 14.1.13, Ground Lessor may terminate the Development



Agreement by giving to Ground Lessee notice of Ground Lessor's election to do so, in which event the Development Agreement shall terminate and the parties thereunder shall be released from all further obligations thereunder, except for obligations that expressly survive the termination thereof.

- (v) If the Event of Ground Lessee's Default occurs after Final Completion of all of the Initial Improvements, Ground Lessor may declare all Rent (or any portion thereof) for the entire remaining Term, and other indebtedness owing by Ground Lessee to Ground Lessor, if any, immediately due and payable without regard to whether possession of the Project shall have been surrendered to or taken by Ground Lessor, and may commence action immediately thereupon and recover judgment therefor. Provided that the only Event of Ground Lessee's Default is the failure to pay Rent, and provided further that Ground Lessee pays all Rent accelerated by Ground Lessor pursuant to this subsection 14.2.2(v) within five (5) days after the date of Ground Lessor's notice of acceleration, then Ground Lessor shall not exercise its rights to terminate this Lease as a result of such Event of Ground Lessee's Default.
- (vi) With respect to any Event of Ground Lessee's Default described in Sections 14.1.7, 14.1.8 or 14.1.9, if Redwood, Wexford Equities and Wexford S&T fail to fully and timely perform their respective obligations under the Completion Guaranties, and such failure continues for a period of thirty (30) days following written notice of such failure from Ground Lessor to Ground Lessee, then Ground Lessor shall have the right (but not the obligation) in its sole discretion to complete the Initial Improvements itself or through its agents or third parties; and Ground Lessee shall promptly pay to Ground Lessor on demand a sum equal to the costs incurred by Ground Lessor (regardless of whether the actual cost of completion through Final Completion of all of the Initial Improvements exceeds the amount originally budgeted therefor, and regardless of whether such excess results from delays or start-up costs or contractor settlements or other costs or inefficiencies inherent in obtaining such performance from persons whom Ground Lessee may have failed to pay or who may then be unfamiliar with the Final Construction Documents or the Project), together with interest on such demanded sum at the Default Interest Rate, commencing on the date of demand and continuing until paid, except that after



judgment all such sums shall bear interest at the rate prescribed by applicable law for judgments. In connection with any construction undertaken by Ground Lessor, Ground Lessor may elect to do any or all of the following: (a) use its own employees and/or engage builders, general contractors, trade contractors, suppliers, architects, engineers, inspectors and others for the purpose of furnishing labor, materials, equipment and fixtures in connection with the construction of the Initial Improvements; (b) amend, modify or terminate any then existing contracts that may be assigned to Ground Lessor in conjunction with the development and/or construction of the Initial Improvements; and (c) pay, settle or compromise all bills or claims which may become liens against the Project, or which have been or may be incurred in any manner (y) in connection with the construction of the Initial Improvements or (z) for the discharge of such liens, encumbrances or defects in title.

- (vii) Ground Lessor may exercise any and all other rights, whether in law or in equity, including without limitation, the right to a writ of mandamus, specific performance, injunction or other similar relief, that Ground Lessor has against Ground Lessee, whether under the law generally or under this Lease, including the right to apply for a receiver if possession is not tendered upon the expiration or termination of this Lease. Nothing in this Lease shall be deemed to limit or restrict Ground Lessor's rights and remedies under the Development Agreement, the Guaranty or the Completion Guaranties.

14.2.3 Ground Lessor shall not be required to serve Ground Lessee with any notices or demands as a prerequisite to its exercise of any of its rights or remedies under this Lease, other than those notices and demands specifically required under this Lease. GROUND LESSEE EXPRESSLY WAIVES THE SERVICE OF ANY STATUTORY DEMAND OR NOTICE WHICH IS A PREREQUISITE TO GROUND LESSOR'S COMMENCEMENT OF EVICTION PROCEEDINGS AGAINST GROUND LESSEE, INCLUDING THE DEMANDS AND NOTICES SPECIFIED IN ANY APPLICABLE STATE STATUTE OR CASE LAW. GROUND LESSEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, INCLUDING WITHOUT LIMITATION ANY LAWSUIT BROUGHT BY GROUND LESSOR TO RECOVER POSSESSION OF THE PROJECT FOLLOWING GROUND LESSOR'S TERMINATION OF THIS LEASE OR THE RIGHT OF GROUND LESSEE TO POSSESSION OF THE PROJECT PURSUANT TO THE TERMS OF THIS LEASE AND ON ANY CLAIM FOR DELINQUENT RENT WHICH GROUND LESSOR MAY JOIN IN ITS LAWSUIT TO RECOVER POSSESSION. GROUND



LESSEE WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO ASSERT ANY COUNTERCLAIM, OTHER THAN ONE WHICH IS COMPULSORY UNDER APPLICABLE LAW, AGAINST GROUND LESSOR IN ANY LEGAL PROCEEDINGS BROUGHT BY GROUND LESSOR WHICH ARISE OUT OF OR ARE IN ANY WAY RELATED TO THIS LEASE.

14.2.4 If Ground Lessor exercises either of the remedies provided in Sections 14.2.2 (ii) or (iii), Ground Lessee shall surrender possession and vacate the Project and immediately deliver possession thereof to Ground Lessor, and Ground Lessor may re-enter and take complete and peaceful possession of the Project, with process of law, and Ground Lessor may remove all occupants and property therefrom, without being deemed guilty in any manner of trespass, eviction or forcible entry and detainer and without relinquishing Ground Lessor's right to Rent or any other right given to Ground Lessor hereunder or by operation of law.

14.2.5 If Ground Lessor terminates the right of Ground Lessee to possession of the Project without terminating this Lease, Ground Lessor shall have the right to immediate recovery of all amounts then due hereunder. If Ground Lessor exercises such right of termination of possession based on an Event of Ground Lessee's Default that occurs after Final Completion of all of the Initial Improvements, then such termination of possession shall not release Ground Lessee, in whole or in part, from Ground Lessee's obligation to pay Rent hereunder for the full Term, and Ground Lessor shall have the right, from time to time, to recover from Ground Lessee, and Ground Lessee shall remain liable for, all Rent accruing as it becomes due under this Lease during the period from the date of such notice of termination of possession to the stated end of the Term. In any such case, Ground Lessor shall make reasonable efforts to relet the Project in accordance with criteria established by Ground Lessor in its sole and absolute discretion. In attempting to relet the Project, Ground Lessor may make repairs, alterations and additions in or to the Project to the extent reasonably deemed by Ground Lessor necessary or desirable, and Ground Lessee upon demand shall pay the reasonable cost of all of the foregoing together with Ground Lessor's reasonable expenses of reletting. The rents from any such reletting shall be applied first to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of reletting (including reasonable attorneys' fees and brokers' fees and commissions) and second to the payment of Rent herein provided to be paid by Ground Lessee. Any excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder.

14.2.6 If this Lease or Ground Lessee's right to possession is terminated by Ground Lessor, Ground Lessor shall be entitled to recover from Ground Lessee all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Ground Lessee, or for which Ground Lessee is liable or for which Ground Lessee has agreed to indemnify Ground Lessor, which may be then owing and unpaid, and all reasonable costs and expenses, including court costs and reasonable attorneys' fees incurred by Ground Lessor in the enforcement of its rights and remedies hereunder. In addition, Ground Lessor shall be entitled to recover the following as damages for loss of the bargain and not as a penalty: (i) if Ground Lessor has accelerated and declared all Rent immediately due and payable under Section 14.2.2(v), the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate Rent which would have been payable after the termination date had this Lease or Ground Lessee's possession not been



terminated, including, without limitation, the amount projected by Ground Lessor to represent Additional Rent for the remainder of the Term, over the then present value of the then aggregate fair rent value of the Property for the balance of the Term, such present worth to be computed in each case on the basis of a one and one-half percent (1.5%) per annum discount from the respective dates upon which such Rent would have been payable hereunder had this Lease not been terminated, and (ii) any damages in addition thereto, including without limitation reasonable attorneys' fees and court costs, which Ground Lessor sustains as a result of the breach of any of the covenants of this Lease other than for the payment of Rent.

14.2.7 Receipt by Ground Lessor of less than the full Rent due shall not be construed to be other than a payment on account of Rent then due, nor shall any statement on Ground Lessee's check or any letter accompanying Ground Lessee's check be deemed an accord and satisfaction, and Ground Lessor may accept such payment without prejudice to Ground Lessor's right to recover the balance of the Rent due or to pursue any other remedies provided in this Lease. The acceptance by Ground Lessor of Rent hereunder shall not be construed to be a waiver of any breach by Ground Lessee of any term, covenant or condition of this Lease.

14.2.8 Ground Lessee agrees that in the event of its default in the performance of any of the terms, conditions or covenants of this Lease requires Ground Lessor, in the exercise of its sole discretion, to use the services of an attorney to attempt to or successfully remedy such default, Ground Lessee shall reimburse Ground Lessor for any and all reasonable expenses incurred in the use of such attorney.

14.2.9 Notwithstanding any other provision of this Lease, Ground Lessor waives any right to recover consequential (except as provided in Section 15.2 of this Lease) or punitive damages, or loss of profits, from Ground Lessee as a result of any Event of Ground Lessee's Default.

### **14.3 Ground Lessor's Right to Perform Ground Lessee's Covenants.**

14.3.1 If Ground Lessee shall at any time fail to pay any Taxes in accordance with the provisions of Section 4.4, or fail to pay any Imposition in accordance with the provisions of Article VII, or to take out, pay for, maintain and deliver any of the insurance policies provided for in Article VIII, or to make any other payment or perform any other act on its part required to be made or performed in accordance with any terms of this Lease, then Ground Lessor, without waiving or releasing Ground Lessee from any obligation of Ground Lessee contained in this Lease, without waiving any resulting Event of Ground Lessee's Default and without limiting its other rights and remedies under this Lease, may, but shall be under no obligation to:

- (a) after five (5) days' notice to Ground Lessee, pay any Taxes payable by Ground Lessee pursuant to the provisions of Section 4.4 or any Imposition payable by Ground Lessee pursuant to the provisions of Article VII, or
- (b) take out, pay for and maintain any of the insurance policies provided for in Article VIII if Ground Lessee shall fail to provide



to Ground Lessor evidence of continuous insurance coverage as required pursuant to Article VIII, or

- (c) remove any Signage that is not in compliance with the terms of this Lease, or
- (d) in the event of emergency, after ten (10) days' notice (or such notice or no notice if not possible under the circumstances) to Ground Lessee, make any other payment or perform any other act on Ground Lessee's part to be made or performed as in this Lease provided, and enter upon the Property for any such purpose, and take all such action thereon, as may be necessary therefor.

The notice provisions contained in this Section 14.3.1 shall not extend any notice or grace period set forth in Section 14.1.

14.3.2 All sums paid by Ground Lessor, and all costs and expenses, including reasonable attorney's fees, incurred by Ground Lessor, in connection with the performance of any act permitted under this Section 14.3, together with interest thereon at the Default Interest Rate from the respective dates of Ground Lessor's making of each such payment or incurring of each such cost and expense, shall be paid by Ground Lessee to Ground Lessor on demand.

**14.4 No Implied Termination.** Under no circumstances shall the exercise by Ground Lessor of the rights granted in this Article XIV, or the exercise of any other right or remedy granted to Ground Lessor under any other provision of this Lease to cure, prevent or take any other action with respect to any Event of Ground Lessee's Default by Ground Lessee, constitute an eviction of Ground Lessee, result in a termination of this Lease, or in any manner whatsoever relieve Ground Lessee from any liability to pay Base Rent, Additional Rent or other sums payable by Ground Lessee as in this Lease provided or from the keeping, observance and performance of any other covenant, condition and agreement on the part of Ground Lessee to be kept, observed and performed under this Lease, unless Ground Lessor shall in writing expressly and specifically state otherwise. If Ground Lessor does not elect to terminate this Lease on account of any Event of Ground Lessee's Default, Ground Lessor may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover all Base Rent, Additional Rent and other charges due under the Lease as the same become due and payable.

**14.5 Waiver of Notice.** Ground Lessee hereby waives (i) any right (whether by statute or otherwise) of notice to vacate the Property and (ii) any other right to notice other than as expressly set forth in this Lease.

**14.6 Events of Ground Lessor's Default.** Each of the following shall constitute an Event of Default on the part of Ground Lessor (an "Event of Ground Lessor's Default"):

14.6.1 Ground Lessor shall fail to perform any term, covenant or condition under this Lease on the date the same is required under this Lease, and such failure shall continue for sixty (60) days following receipt by Ground Lessor of written notice from Ground Lessee of such failure, provided that if (i) such failure is not reasonably susceptible to cure within sixty



(60) days, and (ii) Ground Lessor commences to cure such failure within such sixty (60) day period and thereafter diligently and continuously prosecutes such cure, then such sixty (60) day period shall be extended to such date as may be reasonably necessary to permit Ground Lessor to cure such failure.

**14.7 Remedies for Event of Ground Lessor's Default.** If an Event of Ground Lessor's Default shall occur, Ground Lessee may treat any one or more of the Event(s) of Ground Lessor's Default as a breach of this Lease, and thereupon at its option, by serving thirty (30) days prior written notice on Ground Lessor, Ground Lessee shall have all rights and remedies available under applicable law or in equity as limited by, and subject to, this Section. The aggregate dollar amount of any recovery against Ground Lessor shall be limited to the Liability Cap. Prior to seeking recovery against Ground Lessor, Ground Lessee, to the extent that Ground Lessee's claim against Ground Lessor is covered by any applicable insurance policies actually carried by Ground Lessee or required to be carried by Ground Lessee under the terms of this Lease, shall seek and pursue recovery from any such insurance, provided that the amount of any deductible under such insurance and any other reasonable costs paid by Ground Lessee in pursuing such rights under its insurance policies shall be paid by Ground Lessor, subject to the Liability Cap. In furtherance of the foregoing, Ground Lessee's right to enforce or satisfy any judgment or decree based upon or arising out of the obligations or liabilities of Ground Lessor under this Lease, including the indemnities provided by Ground Lessor under this Lease, shall be limited to the Liability Cap. In addition, Ground Lessee's sole right and remedy in any action or proceeding concerning Ground Lessee's reasonableness (where the same is required under this Lease) will be an action for declaratory judgment or specific performance; and Ground Lessor shall not be liable to Ground Lessee for any indirect, special, consequential, incidental, punitive or exemplary damages or lost revenues or profits, whether foreseeable or not, and Ground Lessee expressly waives any right to recover any such damages. Ground Lessee shall have the right to set off against any Rent payable under this Lease for amounts owed by Ground Lessor to Ground Lessee and/or amounts reasonably expended by Ground Lessee in curing any Ground Lessor's Default; provided, however, Ground Lessee shall not be permitted to exercise such set-off right unless and until Ground Lessee obtains a final and unappealable judgment from a court of competent jurisdiction for collection of any such sums.

**14.8 Non-Recourse.** Notwithstanding any other provision of this Lease, in the event of any judgment or decree based upon or arising out of the obligations or liabilities of Ground Lessor under this Lease, Ground Lessee shall not (and hereby waives and releases any right to) enforce or satisfy such judgment or decree against any assets of Ground Lessor other than its interest in the (i) the Property, including any Improvements thereon, and (ii) if a structured parking facility is constructed thereon, the Relocated Parking Area, including such structured parking facility constructed thereon, but not to exceed the Liability Cap. The intent of this Section is that Ground Lessor's liability under this Lease (a) shall be limited to its interest in (y) the Property, including any Improvements thereon, and (z) if a structured parking facility is constructed thereon, the Relocated Parking Area, including such structured parking facility constructed thereon, and (b) shall not exceed the Liability Cap. Ground Lessor shall have no personal liability to Ground Lessee other than its interest in the following, not to exceed the Liability Cap: (1) the Property, including any Improvements thereon, and (2) if a structured parking facility is constructed thereon, the Relocated Parking Area, including such structured parking facility constructed thereon. Additionally, notwithstanding anything to the contrary



contained in this Lease or the Parking Agreement, the application of the Liability Cap with respect to Ground Lessor's liability under this Lease shall be cumulative with Ground Lessor's liability under the Parking Agreement, so that the aggregate liability of Ground Lessor under this Lease and under the Parking Agreement shall not exceed the Liability Cap (as further limited by clause (a) of this Section 14.8). For example, if Ground Lessee obtains a judgment in the amount of \$3,000,000.00 against Ground Lessor as a result of an Event of Ground Lessor's Default and a judgment in the amount of \$2,500,000.00 is obtained against Ground Lessor as a result of Ground Lessor's default under the Parking Agreement, then the maximum amount that may be enforced against Ground Lessor is \$5,000,000.00 (as further limited by clause (a) of this Section 14.8).

**14.9 Exculpation.** It is the intent and agreement of the parties hereto that only the parties as entities shall be responsible in any way for their respective obligations hereunder. In that regard, no trustee, officer, director, shareholder, partner, investor, official, representative, employee, agent, or attorney of any of the parties to this Lease shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Lease, or any other matters contemplated herein.

**14.10 Certain Defaults.** The limitation on remedies set forth in this Article 14 shall not limit the rights and remedies of Ground Lessee and the Ground Lessor in connection with (i) any indemnification obligation set forth in this Lease, (ii) any obligation under this Lease that by its terms survives termination of this Lease and (iii) the ability to collect under insurance policies provided for in this Lease; subject however, to the limitations and provisions set forth in Section 14.7.

## **15. SURRENDER**

**15.1 Surrender at End of Term.** Except for the Permitted Exceptions, on the Expiration Date or earlier termination of the Term, title to the Improvements, if any, free and clear of all debts, mortgages, encumbrances, and liens shall automatically pass to, vest in and belong to Ground Lessor or its successor in ownership and it shall be lawful for Ground Lessor or its successor in ownership to re-enter and repossess the Property and Improvements, if any, without process of law. Ground Lessor and Ground Lessee covenant that to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose, at Ground Lessor's expense. Ground Lessee in such event does hereby waive any demand for possession thereof and agrees to surrender and deliver the Property and, except as otherwise expressly set forth in this Lease, the Improvements, in a condition that is consistent with Applicable Standards, without process of law peaceably to Ground Lessor or its successor in ownership immediately upon the Expiration Date or earlier termination of the Term. If the Property and such Improvements are not so surrendered, the Ground Lessor shall repay Ground Lessor for all expenses which Ground Lessor shall incur by reason of it.

**15.2 Holding Over.** If Ground Lessee continues to occupy the Property after the expiration or other termination of this Lease or the termination of Ground Lessee's right of possession, such occupancy shall be that of a tenancy at sufferance. Ground Lessee shall, throughout the entire holdover period, be subject to all the terms and provisions of this Lease and



shall pay for its use and occupancy an amount (on a per month basis without reduction for any partial months during any such holdover) equal to one hundred fifty percent (150%) of the Base Rent and Additional Rent due under this Lease for the last full month of the term hereof. No holding over by Ground Lessee or payments of money by Ground Lessee to Ground Lessor after the expiration of the Term shall be construed to extend the Term or prevent Ground Lessor from recovery of immediate possession of the Property by summary proceedings or otherwise. Ground Lessee shall also be liable to Ground Lessor for all direct and consequential damages which Ground Lessor may suffer by reason of any holding over by Ground Lessee.

#### **16. GROUND LESSOR'S RIGHT OF FIRST OFFER**

**16.1 Notice.** If at any time during the Term, Ground Lessee determines to market the Leasehold Estate for assignment, sale, transfer or other disposition, or to otherwise enter into a transaction with any Person for the assignment, sale or other disposition of the Leasehold Estate, then prior to marketing the Leasehold Estate or entering into such assignment, sale, transfer or disposition transaction, Ground Lessee shall notify Ground Lessor in writing ("**Leasehold ROFO Notice**") of its intention to market the Leasehold Estate or enter into an assignment, sale, transfer or disposition transaction. The Leasehold ROFO Notice shall set forth all material terms and conditions of the proposed marketing or transaction, including the purchase price or other consideration ("**Leasehold ROFO Price**"), the proposed closing date, and any other material terms upon which Ground Lessee intends to market the Leasehold Estate or enter into an assignment, sale, transfer or disposition transaction, all as determined by Ground Lessee, in its sole and absolute discretion (the "**Leasehold Initial Offer**").

**16.2 Ground Lessor Response.** Within forty-five (45) days following Ground Lessor's receipt of the Leasehold ROFO Notice ("**Leasehold ROFO Period**"), Ground Lessor shall send written notice to Ground Lessee stating whether or not Ground Lessor accepts the Leasehold Initial Offer (the "**Ground Lessor Response**"). If Ground Lessor rejects the Leasehold Initial Offer or fails to send the Ground Lessor Response within such forty-five (45) day period, or if Ground Lessor and Ground Lessee within forty-five (45) days after Ground Lessor's acceptance of the Leasehold Initial Offer fail to enter into a definitive agreement evidencing the terms and conditions of the assignment, sale, transfer or other disposition of the Leasehold Estate to Ground Lessor in accordance with the Leasehold Initial Offer, then Ground Lessor shall be deemed to have waived its rights under this Article XVI and Ground Lessee shall have the right during the next twelve (12) month period to market, sell or contract to sell the Leasehold Estate to any Person, so long as the purchase price or other consideration payable to Ground Lessee in connection with any such sale is not less than ninety-five percent (95%) of the Leasehold ROFO Price.

**16.3 Continuation of Ground Lessor Rights.** The rights of Ground Lessor described in Sections 16.1 and 16.2 shall survive any assignment, sale or other disposition of the Leasehold Estate, and shall apply in connection with any one or more future and subsequent assignments, sales, transfers and other dispositions of the Leasehold Estate.

**16.4 Inapplicability.** The right of first offer provided in this Article shall not apply to any Permitted Transfer.



**16.5 Prohibitions on Transfer.** Nothing in this Article XVI shall be deemed to restrict, limit or otherwise modify the prohibitions on Transfer as set forth in Article XII.

**17. GROUND LESSEE'S RIGHT OF FIRST OFFER**

**17.1 Notice.** If at any time during the Term, Ground Lessor determines to market the Fee Estate for sale, transfer or other disposition, or to otherwise enter into a transaction with any Person for the sale or other disposition of the Fee Estate, then prior to marketing the Fee Estate or entering into such sale, transfer or disposition transaction, Ground Lessor shall notify Ground Lessee in writing ("**Fee ROFO Notice**") of its intention to market the Fee Estate or enter into a sale, transfer or disposition transaction. The Fee ROFO Notice shall set forth all material terms and conditions of the proposed marketing or transaction, including the purchase price or other consideration ("**Fee ROFO Price**"), the proposed closing date, and any other material terms upon which Ground Lessor intends to market the Fee Estate or enter into an assignment, sale, transfer or disposition transaction, all as determined by Ground Lessor, in its sole and absolute discretion (the "**Fee Initial Offer**").

**17.2 Ground Lessee Response.** Within forty-five (45) days following Ground Lessee's receipt of the ROFO Notice ("**Fee ROFO Period**"), Ground Lessee shall send written notice to Ground Lessor stating whether or not Ground Lessee accepts the Fee Initial Offer (the "**Ground Lessee Response**"). If Ground Lessee rejects the Fee Initial Offer or fails to send the Ground Lessee Response within such forty-five (45) day period, or if Ground Lessee and Ground Lessor within forty-five (45) days after Ground Lessee's receipt of the Fee Initial Offer fail to enter into a definitive agreement evidencing the terms and conditions of the sale, transfer or other disposition of the Fee Estate to Ground Lessee in accordance with the Fee Initial Offer, then Ground Lessee shall be deemed to have waived its rights under this Article XVII and Ground Lessor shall have the right during the next twelve (12) month period to market, sell or contract to sell the Fee Estate to any Person, so long as the purchase price or other consideration payable to Ground Lessor in connection with any such sale is not less than ninety-five percent (95%) of the Fee ROFO Price.

**17.3 Continuation of Ground Lessee Rights.** The rights of Ground Lessee described in Sections 17.1 and 17.2 shall survive any sale or other disposition of the Fee Estate, and shall apply in connection with any one or more future and subsequent sales, transfers and other dispositions of the Fee Estate.

**17.4 Inapplicability.** The right of first offer provided in this Article shall not apply to (i) any transfer of the Fee Estate to an Affiliate of Ground Lessor, (ii) any mortgage or other debt financing or refinancing of the Project by Ground Lessor, (iii) a transfer of the Fee Estate to a Mortgagee or other purchaser at foreclosure or transfer in lieu of foreclosure, or any transfer of the Fee Estate pursuant to any bankruptcy, insolvency or similar proceeding, or (iv) any transaction between Ground Lessor and any entity into or with which Ground Lessor is merged or consolidated.



## 18. PATRIOT ACT

18.1 Pursuant to the Executive Order (defined below) and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"), U.S. companies are required to ensure that they do not transact business with persons or entities determined to have committed, or to pose a risk of committing or supporting, terrorist acts. Neither Ground Lessee nor its constituents or affiliates are in violation of any laws relating to terrorism or money laundering, including the Patriot Act.

18.2 Neither Ground Lessee nor any of its constituents or affiliates is a "Prohibited Person" which is defined as follows:

18.2.1 a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order");

18.2.2 a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

18.2.3 a person or entity with whom Ground Lessor is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering Law, including the Executive Order and the Patriot Act;

18.2.4 a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

18.2.5 a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tlstdn.pdf> or at any replacement website or other replacement official publication of such list; and

18.2.6 a person or entity who is affiliated with a person or entity listed above.

18.3 Neither Ground Lessee nor any of its affiliates or constituents is or will: (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

18.4 Ground Lessee covenants and agrees to deliver to Ground Lessor any certification or other evidence requested from time to time by Ground Lessor in its reasonable discretion, confirming Ground Lessee's compliance with this provision.



**18.5** Ground Lessee will develop, implement and maintain security and emergency plans for the Project, in accordance with the guidelines provided in the BOMA Guide to Security and Emergency Planning (ISBN No. 0-9431-30-28-X).

**18.6** Ground Lessee shall screen all prospective subtenants, contractors, subcontractors, consultants and vendors, and their respective principals, in accordance with the regulations of the Office of Foreign Assets Control against a list of known terrorists, drug traffickers, and other individuals designated as "blocked" by the Office of Foreign Assets Control (whose web address is <http://www.ustreas.gov/offices/eotffc/ofac>). Ground Lessee shall maintain the records of such screenings and furnish same to Ground Lessor upon Ground Lessor's request.

## **19. MISCELLANEOUS**

**19.1 Quiet Enjoyment.** If and so long as Ground Lessee shall pay the Base Rent, Additional Rent and all other charges agreed to be paid by Ground Lessee, and shall perform and observe all the covenants and conditions herein contained on the part of Ground Lessee to be performed and observed, Ground Lessee shall quietly enjoy the Property, without the claims of any Person claiming by, through, or under Ground Lessor, subject to the terms and conditions of this Lease.

**19.2 Notices.** Any notices, approvals, requests or demands required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Lease, shall be in writing and shall be deemed to have been duly given, delivered or served only if and when (i) delivered by hand to the addressee or (ii) sent by nationally known overnight courier service. Such notices shall be delivered or sent to the addresses set forth below or to any other address as may hereafter be furnished in writing in like manner. The date of hand delivery, the date of delivery or refusal of delivery by the overnight courier shall be deemed to be the date of service.

Ground Lessor (all notices): University of Miami  
1252 Memorial Dr.  
Suite 230  
Coral Gables, FL 33146  
Attention: Joe Natoli, Senior VP & CFO

with copies to (all notices): University of Miami  
Office of the General Counsel  
1320 South Dixie Highway, Suite 1250  
Coral Gables, FL 33146  
Attention: Maria Gralia, Assistant General Counsel

University of Miami Miller School of Medicine  
Professional Arts Center  
1150 NW 14th St.  
Suite 310  
Miami, FL 33136



Attention: Dr. Bart Chernow

Miami Asset Management Company  
11511 SW 57th Ave.  
Pinecrest, FL 33156  
Attention: Michael Katz, President

and

University of Miami Real Estate Office  
1535 Levante Avenue, Suite 208  
Coral Gables, FL 33146  
Attention: Gerard M. Altschul,  
Assistant Vice President for Real Estate

Ground Lessor (rent address): University of Miami Real Estate Office  
1535 Levante Avenue, Suite 208  
Coral Gables, FL 33146  
Attention: Gerard M. Altschul,  
Assistant Vice President for Real Estate

with copy to (rent address): University of Miami  
Office of the General Counsel  
1320 South Dixie Highway, Suite 1250  
Coral Gables, FL 33146  
Attention: Maria Gralia, Assistant General Counsel

Ground Lessee: Wexford Miami, LLC  
c/o Wexford Science & Technology LLC  
7312 Parkway Drive  
Hanover, MD 21076  
Attention: S. Nelson Weeks, General Counsel

with a copy to: Ballard Spahr LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
Attention: Bart I. Mellits, Esquire

**19.3 Estoppel Certificates.** Ground Lessee agrees at any time and from time to time upon not less than thirty (30) days prior written request by Ground Lessor, to execute, acknowledge and deliver to Ground Lessor, and Ground Lessor agrees at any time and from time to time upon not less than thirty (30) days prior written request by Ground Lessee, to execute, acknowledge and deliver to Ground Lessee, a statement in writing, certifying that (i) this Lease is unmodified and in full force and effect (or if there have been modifications or some respect in which the same is not in full force and effect, that the same is in full force and effect, as modified or otherwise qualified and stating the modifications and qualifications), (ii) the dates to which the Base Rent, Additional Rent and other charges have been paid, (iii) whether or not to the



knowledge of the party so certifying there is any existing default, or event which with the giving of notice or the passing of time would constitute a default, by the other party in the compliance, performance and observance of the covenants and conditions of this Lease to be performed or observed on the part of such other party, and (iv) such other matters as may reasonably be requested by the requesting party. Any statement delivered pursuant to this Section 19.3 may be relied upon by Ground Lessor or Ground Lessee, as applicable, and any Person (including Mortgagees) that has or may acquire an interest in the Property or Leasehold Estate whether or not such estoppel certificate is addressed to such party.

**19.4 No Merger of Estates.** The fee title of Ground Lessor and the Leasehold Estate shall at all times be separate, and shall in no event be merged, notwithstanding the fact that this Lease or the Leasehold Estate may be held directly or indirectly by or for the account of any Person who shall own the fee estate in the Property. No such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the fee estate and all Persons having any interest in the Leasehold Estate, including any Leasehold Mortgagee, shall join in the execution of a written instrument effecting such merger of estates.

**19.5 Discharge of Liens.** Ground Lessee shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge (levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any mortgage, conditional sale, title retention agreement, security interest or chattel mortgage, or otherwise) which might be or become a lien, encumbrance or charge upon the Property or any part thereof or the income therefrom, whether or not having any priority or preference over or ranking on a parity with the estate, rights and interest of Ground Lessor in the Property or any part thereof or the income therefrom, and Ground Lessee shall not suffer any other matter or thing whereby the estate, rights and interest of Ground Lessor in the Property or any part thereof or the income therefrom might be impaired.

**19.6 No Waiver.** The acceptance by Ground Lessor of the Base Rent, Additional Rent or any other charges due to Ground Lessor, with knowledge of any default on the part of Ground Lessee under this Lease, shall not be deemed to be a waiver of any provisions of this Lease, except as to default in the payment of the Base Rent, Additional Rent or other charges so received. No acceptance by Ground Lessor of a lesser sum than the Base Rent, Additional Rent or other charges then due shall be deemed to be other than on account of the earliest installment of the Base Rent, Additional Rent or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as the Base Rent or Additional Rent or charges due be deemed an accord and satisfaction, and Ground Lessor may accept any such check or payment without prejudice to Ground Lessor's right to recover the balance of such installment or pursue any other remedy provided in this Lease. No failure on the part of Ground Lessor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by Ground Lessor, unless in writing and expressly stating such intent and effect, shall discharge or invalidate such covenant or provision or affect the right of Ground Lessor to enforce the same in the event of any subsequent breach or default. The acceptance by Ground Lessor of any of the Base Rent, Additional Rent or any other sum of money or any other consideration paid by Ground Lessee after the termination of the Term, or after giving by Ground Lessor of any notice hereunder to effect such termination, shall not except as otherwise in this Lease expressly set forth reinstate, continue or extend the Term, or take away, diminish or in any



manner impair the efficacy of any such notice of termination unless so agreed to in writing and signed by Ground Lessor. Neither acceptance of the keys nor any other act or thing done by Ground Lessor or any agent or employee during the Term shall be deemed to be an acceptance of a surrender of the Property, excepting only an agreement in writing signed by Ground Lessor accepting or agreeing to accept such a surrender.

**19.7 Rights Cumulative.** All the rights and remedies of Ground Lessor under this Lease and the Guaranty shall be deemed to be separate and cumulative, and no one or more of such rights or remedies, whether exercised or not, nor any mention of, or reference to, any one or more of them herein, shall be deemed to be in exclusion of, or a waiver of, any of the others, or of any rights or remedies which Ground Lessor might have, whether by present or future law or pursuant to this Lease, and Ground Lessor shall have to the fullest extent permitted by law, the right to enforce any rights or remedies separately, and to take any lawful action or proceedings to exercise or enforce any rights or remedies whether at law or in equity or otherwise, without thereby waiving, or being thereby barred or estopped from exercising and enforcing any other rights or remedies by appropriate action or proceedings.

**19.8 Parties not Liable.** Neither Ground Lessor nor Ground Lessee shall be liable (by way of subrogation or otherwise) to the other party or the other party's employees, agents, lessees, licensees, visitors or contractors for any damage to person or property caused by any act, omission or neglect of Ground Lessor, Ground Lessee or any other Person or incident to the use of the Property, or any business conducted thereon, to the extent covered by insurance carried or required to be carried by a party hereto even though such loss might have been occasioned by the negligence or willful acts or omissions of Ground Lessor, Ground Lessee or any other Person. Ground Lessor and Ground Lessee shall give each insurance company which issues policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by, and recoverable by the insured under the insurance policy to which such deductible relates. Nothing in this section shall require Ground Lessor to maintain insurance with respect to any portion of the Property or Surrounding Area except for the insurance required under Section 8.11.

**19.9 Binding Effect.** The rights and obligations under this Lease shall be binding upon, and inure to the benefit of, Ground Lessor and its successors and assigns. The rights and obligations under this Lease shall be binding upon, and inure to the benefit of, Ground Lessee and its permitted successors and assigns.

**19.10 Memorandum of Lease.** This Lease shall not be recorded in the Public Records, or in any other public records. Ground Lessor and Ground Lessee shall execute a memorandum of this Lease (the "Memorandum of Lease") that Ground Lessee shall record, at its expense, in the Public Records. The Memorandum of Lease shall include notice of such provisions of this Lease as either Ground Lessor or Ground Lessee may reasonably request, but shall not include the amount of Base Rent. Ground Lessee shall execute such releases and partial releases of the Memorandum of Lease as Ground Lessor may require upon any partial termination, termination or expiration of this Lease, and such obligation shall survive such partial termination,



termination or expiration. Ground Lessee hereby appoints Ground Lessor as Ground Lessee's attorney-in-fact to prepare, execute and record such releases and partial releases. This appointment is coupled with an interest and is irrevocable. The cost of recording the Memorandum of Lease, any State of Florida documentary stamps which legally must be attached to the Memorandum of Lease, and any applicable Miami-Dade County and State transfer tax shall be paid in full by Ground Lessee. Ground Lessor acknowledges that, as of the Effective Date, Ground Lessee has delivered to Ground Lessor an executed Termination of Memorandum of Ground Lease to be held by Ground Lessor pursuant to the terms of this Section 19.10. If, and only if, this Lease expires or is sooner terminated, then, upon ten (10) days prior written notice to Ground Lessee, such Termination of Memorandum of Ground Lease shall become effective and, at that time, Ground Lessor shall be permitted to record such Termination of Memorandum of Ground Lease in the Public Records.

**19.11 Entry by Ground Lessor.** From time to time during the Term, upon reasonable prior notice to Ground Lessee, Ground Lessor shall have the right to enter the Property and the Improvements during normal business hours, for purposes of inspecting the Property and Improvements, provided that no such notice shall be required in the event of an emergency. Such entry shall be subject to the rights of Qualifying Subtenants.

**19.12 Transfers and Mortgages of Fee Interest.** Notwithstanding any other provision of this Lease, Ground Lessor shall have the right, at any time and from time to time, to transfer all or any portion of its interest in the Property and/or this Lease, and to grant one or more Mortgages on all or any portion of its fee interest in the Property and/or this Lease and this Lease shall automatically be subject and subordinate to any first mortgage on the fee simple title of Ground Lessor in the Property and to any renewal, extension, modification or replacement thereof provided that the holder of such mortgage executes and delivers to Ground Lessee a non-disturbance agreement reasonably acceptable to Ground Lessee.

**19.13 Attorneys' Fees.** In the event of any action or other litigation arising out of or in connection with this Lease, the prevailing party in such action or litigation shall be entitled to receive from the non-prevailing party or parties all reasonable attorneys' fees, court costs and litigation costs incurred by the prevailing party in connection with such action or proceeding.

**19.14 Approvals by the Ground Lessor and Ground Lessee.** Where this Lease provides for Ground Lessor's or Ground Lessee's approval of or consent to any matter (or if any matter is required to be satisfactory or acceptable to Ground Lessor or Ground Lessee, or any words or phrases of similar meaning) (collectively, a "Consent"), unless otherwise expressly indicated: (i) in order to be effective and binding upon the granting party, such Consent must be in writing, and with respect to Consents sought from Ground Lessor, Ground Lessee must provide to Ground Lessor a written notice requesting such Consent which contains the following in bold: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS [insert either SIXTY (60) DAYS or such other time period set forth in this Lease] AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR CONFIRMATION OF THE REQUESTS SET FORTH IN THIS LETTER;** (ii) such Consent may not be unreasonably withheld, delayed or conditioned; (iii) with respect to Consents from Ground Lessee, shall be deemed to be given (or such matter shall be deemed to be acceptable or satisfactory) if not so given or rejected within ten (10) days (unless this Lease expressly provides



for a different time period) of Ground Lessee's receipt of such request; and (iv) with respect to Consents from Ground Lessor, shall be deemed to be given (or such matter shall be deemed to be acceptable or satisfactory) if not so given or rejected within sixty (60) days (unless this Lease expressly provides for a different time period) of Ground Lessor's receipt of such request, provided that in the event the Consent sought requires approval of Ground Lessor's board or a committee of the board, such sixty (60) day period (or other period if so specified) shall be extended such that Ground Lessor shall have a total of ninety (90) days after the Ground Lessor's receipt of such request to respond thereto.

**19.15 Subordination of Ground Lessor's Lien.** Thirty (30) days after receipt of written request from time to time therefor, Ground Lessor shall execute and deliver to Ground Lessee or any Qualifying Subtenant a form of Ground Lessor's Subordination of Lien in connection with any financing or leasing by Ground Lessee or any Qualifying Subtenant of any furniture or equipment at the Project, in customary form reasonably satisfactory to Ground Lessor.

**19.16 Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

**19.17 Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**19.18 Time of Essence.** Time is of the essence with respect to the performance by Ground Lessor and Ground Lessee of all obligations under this Lease.

**19.19 Required Disclosures/Notifications.** The parties agree to revise the mutually acceptable form of Ground Lease as necessary to comply with any and all provisions, notification and/or disclosures required by any applicable Governmental Authority.

**19.20 Force Majeure and Ground Lessor Delay.** To the extent that the performance by either party of any obligation under this Lease is actually prevented, delayed, retarded or hindered by a Force Majeure Event, and such party promptly notifies the other party of the existence of such Force Majeure Event and identifies the same to the other party as a Force Majeure Event, then such party's performance of such obligation shall be deferred by the period of time in which performance is so prevented, delayed, retarded or hindered. To the extent that the performance by Ground Lessee of any obligation under this Lease is actually prevented, delayed, retarded or hindered by a Ground Lessor Delay, and Ground Lessee promptly notifies the Ground Lessor of the existence of such Ground Lessor Delay and identifies the same to the other party as a Ground Lessor Delay, then Ground Lessee's performance of such obligation shall be deferred by the period of time equal to the period of Ground Lessor's failure to perform.

**19.21 Jurisdiction; Venue; and Waiver of Jury Trial.** EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE



SHALL BE BROUGHT IN THE FEDERAL OR STATE COURT SITUATED IN MIAMI-DADE COUNTY, FLORIDA; (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING; (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS; AND (D) AGREES THAT SERVICE OF ANY COURT PAPER MAY BE EFFECTED ON SUCH PARTY BY MAIL, AS PROVIDED IN SECTION 19.2, OR IN SUCH OTHER MANNER AS MAY BE PROVIDED UNDER APPLICABLE LAWS OR COURT RULES. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS LEASE.

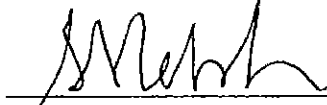
**19.22 Joint and Several.** If the Ground Lessor under this Lease is comprised of more than one Person, then the liability of each Person comprising the Ground Lessor shall be joint and several.

[signatures on following page]



**IN WITNESS WHEREOF**, the Ground Lessor and Ground Lessee have executed this Lease as of the Effective Date.

**WEXFORD MIAMI, LLC, a Delaware  
limited liability company**

By: 

Name: S. Nelson Weeks

Title: Executive Vice President

Date: February 19, 2010

**UNIVERSITY OF MIAMI, a Florida  
non-profit corporation**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: February \_\_, 2010

**7th AVE MARKET, LLC, a Florida  
limited liability company**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: February \_\_, 2010



IN WITNESS WHEREOF, the Ground Lessor and Ground Lessee have executed this Lease as of the Effective Date.

**WEXFORD MIAMI, LLC, a Delaware  
limited liability company**

By: \_\_\_\_\_  
Name: S. Nelson Weeks  
Title: Executive Vice President  
Date: February \_\_, 2010

**UNIVERSITY OF MIAMI, a Florida  
non-profit corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Sr. VP Business & Finance  
Date: February 19, 2010

**7th AVE MARKET, LLC, a Florida  
limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Agent  
Date: February 19, 2010



### JOINDER OF GUARANTORS

Redwood Capital Investments, LLC, Wexford Equities, LLC and Wexford Science & Technology, LLC, each a Maryland limited liability company (collectively, the "**Guarantors**") hereby join in the execution of the foregoing Amended and Restated Ground Lease (the "**Amended and Restated Lease**") in order to confirm that:

1. The Completion Guaranties (as defined in the Amended and Restated Lease) are in full force and effect without modification, but are hereby amended to provide that all references therein to the Ground Lease shall be deemed to refer to the Amended and Restated Lease. Without limiting the generality of the foregoing, where the Completion Guaranties provide reference to the "Ground Lease" for capitalized terms not defined in the Completion Guaranties, such capitalized terms shall have the meanings provided therefore in the Amended and Restated Lease. Except as so amended and as amended hereby, all terms, conditions and provisions of the Completion Guaranties remain in full force and effect;

2. Guarantors consent to the execution, delivery and performance of the Amended and Restated Lease by Ground Lessee;

3. Guarantors hereby reaffirm, re-acknowledge and ratify each and every of the terms, representations, warranties, covenants and conditions of the Completion Guaranties, as amended hereby, and agree to remain bound thereby. Without limiting the generality of the foregoing, all representations and warranties contained in Section 5.1 of the Completion Guaranties are hereby re-made as is made on the date of this Joinder;

4. To the knowledge of the Guarantors, Guarantors have no claim, offset or defense to any of their obligations under the Completion Guaranties, as amended hereby; and

5. Recital B of each of the Completion Guaranties is hereby amended and restated in its entirety as follows:

"B. Ground Lessee is obligated under the Ground Lease, at its sole cost and expense, to: (i) construct the Initial Improvements with diligence and continuity in accordance with the Final Construction Documents, (ii) furnish or cause to be furnished all labor and materials necessary to develop, construct and complete the Initial Improvements in accordance with the Final Construction Documents and to pay and discharge any and all costs and expenses thereof as the same may become due and payable, including all site work, design costs, other soft costs associated with the development and construction of the Project and all hard costs of construction, and (iii) (A) cause construction of the Tower Building to commence not later than the later of thirty (30) days after the issuance of the first permit for vertical construction of the Tower Building or thirty (30) days after the date that the financing contingency set forth in Section 3.1.3 of the Ground Lease is satisfied or waived, and construction of the Expansion to



commence not later than thirty (30) days after the issuance of the first permit for vertical construction of the Expansion, (B) diligently prosecute such construction without any discontinuance exceeding ninety (90) consecutive days, and (C) achieve Final Completion of all of the Initial Improvements by the Outside Completion Date (subject to extension as set forth in Section 14.1.9 of the Ground Lease), all subject to extension due to Force Majeure Events and Ground Lessor Delays, free and clear of any construction liens or other liens or any claim of any such lien (all of the foregoing obligations are referred to in this Guaranty as the "Completion Obligations"). Ground Lessee shall be deemed to have "commenced construction" of the Tower Building and/or the Expansion, as the case may be, pursuant to clauses (iii)(A) above, upon its commencement of construction of the foundations of the Tower Building and/or the Expansion, as the case may be."

6. Section 2.1 of the Completion Guaranties is hereby amended by adding the following text to the end of clause (ii) thereof: "(subject to Force Majeure, Ground Lessor Delay and extension as provided in Section 14.1.9 of the Ground Lease)."

This Joinder may be executed in counterparts.

Dated as of February 19, 2010.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Joinder of Guarantors to be duly executed by their duly authorized representatives, all as of the day and year first written above.

**REDWOOD CAPITAL INVESTMENTS, LLC,**  
a Maryland limited liability company

By: 12/2/11 R. Alan Butler  
R. Alan Butler, Managing Director

**WEXFORD EQUITIES, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

**WEXFORD SCIENCE & TECHNOLOGY, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

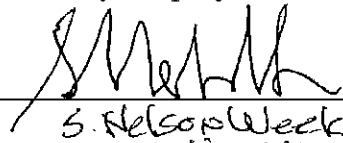


IN WITNESS WHEREOF, the parties hereto have caused this Joinder of Guarantors to be duly executed by their duly authorized representatives, all as of the day and year first written above.

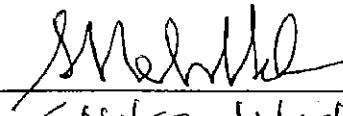
**REDWOOD CAPITAL INVESTMENTS, LLC**, a Maryland limited liability company

By: \_\_\_\_\_  
R. Alan Butler, Managing Director

**WEXFORD EQUITIES, LLC**, a Maryland limited liability company

By:  \_\_\_\_\_  
S. Nelson Weeks  
Executive Vice President

**WEXFORD SCIENCE & TECHNOLOGY, LLC**, a Maryland limited liability company

By:  \_\_\_\_\_  
S. Nelson Weeks  
Executive Vice President



**Exhibit "A"**

**Intentionally Omitted**

A-1



**Exhibit "B"**

**Legal Description of Parking Area**

B-1

103



### LEGAL DESCRIPTION OF PARKING PARCEL

#### PARCEL 1:

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 6, 7 AND 9, TOGETHER WITH THOSE PORTIONS OF N.W. 6<sup>TH</sup> PLACE, N.W. 19<sup>TH</sup> STREET AND THE UN-NAMED 15-FOOT WIDE ALLEY (WITH SAID N.W. 6<sup>TH</sup> PLACE, N.W. 19<sup>TH</sup> STREET AND THE UN-NAMED 15-FOOT WIDE ALLEY HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA), ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE S00°59'38"E ALONG THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 395.82 FEET; THENCE DEPARTING SAID WEST LINE OF THE NORTHWEST ¼ OF SECTION 36, N89°00'22"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 40.51 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7<sup>TH</sup> AVENUE) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED AUGUST 18, 1999 IN ROAD PLAT BOOK 152 AT PAGE 9 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WITH SAID POINT OF INTERSECTION BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE N88°58'26"E FOR 330.00 FEET; THENCE S01°01'34"E FOR 370.34 FEET; THENCE S88°58'26"W FOR 329.73 FEET TO A POINT OF INTERSECTION WITH SAID LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH SAID EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7; THENCE N01°04'03"W ALONG SAID PARALLEL LINE FOR 370.34 FEET TO THE POINT OF BEGINNING.

#### PARCEL 2:

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 6 AND 9, TOGETHER WITH THOSE PORTIONS OF N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY, (WITH SAID N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA) ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME



BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE S00°59'38"E ALONG THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 766.15 FEET; THENCE DEPARTING SAID WEST LINE OF THE NORTHWEST ¼ OF SECTION 36, N89°00'22"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 40.99 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 5 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7TH AVENUE) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED AUGUST 18, 1999 IN ROAD PLAT BOOK 152 AT PAGE 9 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WITH SAID POINT OF INTERSECTION BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE N88°58'26"E FOR 329.73 FEET; THENCE S01°01'34"E FOR 58.11 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 IN BLOCK 9 AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION" AND DESCRIBED AS A NORTHERLY BOUNDARY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN WARRANTY DEED FROM DREAMLAND INVESTMENTS CORPORATION TO BETTER WAY OF MIAMI, INC., DATED MAY 9, 1995 AND RECORDED MAY 11, 1995 IN OFFICIAL RECORDS BOOK 16780 AT PAGE 1090 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA (HEREINAFTER, "THE BETTER WAY OF MIAMI, INC. PROPERTY"); THENCE ALONG SAID NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 AND SAID NORTHERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY, S87°41'36"W FOR 64.37 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST 10 FEET OF PORTIONS OF LOTS 22 AND 23 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION," THIS LINE ALSO BEING A WESTERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC., PROPERTY; THENCE S01°00'39"E ALONG SAID EAST LINE OF THE WEST 10 FEET OF LOTS 22 AND 23 AS WELL AS SAID WESTERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY FOR 28.54 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 16 IN BLOCK 6 AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION;" THENCE DEPARTING SAID EAST LINE OF THE WEST 10 FEET OF LOTS 22 AND 23 AND SAID WESTERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY, S87°53'13"W ALONG SAID EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 16 IN BLOCK 6 AND SAID SOUTHERLY LINE OF LOT 16 FOR 155.18 FEET TO THE SOUTHWEST CORNER OF SAID LOT 16; THENCE S01°02'21"E ALONG THE WESTERLY LINE OF LOT 17 IN SAID BLOCK 6 FOR 4.99 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 6 IN SAID BLOCK 6; THENCE S87°52'52"W ALONG SAID EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 6 IN BLOCK 6 AND SAID SOUTHERLY LINE OF LOT 6 FOR 110.17 FEET TO A POINT OF INTERSECTION WITH SAID LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7TH AVENUE); THENCE N01°04'03"W ALONG SAID PARALLEL LINE FOR 98.13 FEET TO THE POINT OF BEGINNING.



PARCEL 3:

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 6 AND 9, TOGETHER WITH THOSE PORTIONS OF N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY, (WITH SAID N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA) ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE S00°59'38"E ALONG THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 864.28 FEET; THENCE DEPARTING SAID WEST LINE OF THE NORTHWEST ¼ OF SECTION 36, N89°00'22"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 41.11 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 5 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7<sup>TH</sup> AVENUE) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED AUGUST 18, 1999 IN ROAD PLAT BOOK 152 AT PAGE 9 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WITH SAID POINT OF INTERSECTION BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE N87°52'52"E ALONG THE SOUTHERLY LINE OF LOT 6 IN SAID BLOCK 6 AND ITS EASTERLY PROLONGATION THEREOF FOR 110.17 FEET TO A POINT OF INTERSECTION WITH THE WESTERLY LINE OF LOT 17 IN SAID BLOCK 6; THENCE N01°02'21"W ALONG SAID WESTERLY LINE OF LOT 17 IN BLOCK 6 FOR 4.99 FEET TO THE SOUTHWEST CORNER OF LOT 16 IN SAID BLOCK 6; THENCE N87°53'13"E ALONG THE SOUTHERLY LINE OF SAID LOT 16 IN BLOCK 6 AND ITS EASTERLY PROLONGATION THEREOF FOR 155.18 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST 10 FEET OF A PORTION OF LOT 23 AND LOT 24 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION," THIS LINE ALSO BEING A WESTERLY BOUNDARY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN WARRANTY DEED FROM DREAMLAND INVESTMENTS CORPORATION TO BETTER WAY OF MIAMI, INC., DATED MAY 9, 1995 AND RECORDED MAY 11, 1995 IN OFFICIAL RECORDS BOOK 16780 AT PAGE 1090 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA (HEREINAFTER, "THE BETTER WAY OF MIAMI, INC. PROPERTY"); THENCE S01°00'39"E ALONG SAID EAST LINE OF THE WEST 10 FEET OF A PORTION OF LOT 23 AND LOT 24 IN SAID BLOCK 9 AND A WESTERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY FOR 79.49 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID LOT 24 IN BLOCK 9; THENCE S87°41'00"W ALONG SAID SOUTHERLY LINE OF LOT 24 IN BLOCK 9 AND A WESTERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY FOR 10.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 24 IN BLOCK 9; THENCE S01°00'39"E ALONG THE WEST LINE OF LOT 25 AND A PORTION OF LOT 26 IN SAID BLOCK 9, AS WELL AS A WESTERLY BOUNDARY LINE OF THE SAID BETTER WAY OF MIAMI, INC. PROPERTY FOR 49.89 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY PROLONGATION



OF THE SOUTHERLY LINE OF LOT 19 IN BLOCK 6 AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION;" THENCE S87°44'27"W ALONG SAID EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 19 IN BLOCK 6, THE SOUTHERLY LINE OF SAID LOT 19 AND ITS WESTERLY PROLONGATION THEREOF AND THE SOUTHERLY LINE OF LOT 1 IN SAID BLOCK 6 (WITH SAID LINE BEING COINCIDENT WITH THE NORTHERLY RIGHT OF WAY LINE OF N.W. 18<sup>TH</sup> STREET AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION.") FOR 234.71 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST; THENCE NORTHWESTERLY ALONG SAID SOUTHERLY LINE OF LOT 1 IN BLOCK 6, the NORTHERLY RIGHT OF WAY LINE OF N.W. 18<sup>TH</sup> STREET AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 54°19'19" FOR 23.70 FEET TO A POINT OF NON-TANGENT INTERSECTION WITH SAID LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7<sup>TH</sup> AVENUE), WITH SAID POINT OF NON-TANGENT INTERSECTION BEARING S52°03'46"W FROM THE CENTER OF SAID CURVE; THENCE N01°04'03"W ALONG SAID PARALLEL LINE FOR 114.64 FEET TO THE POINT OF BEGINNING.



**Exhibit "C"**

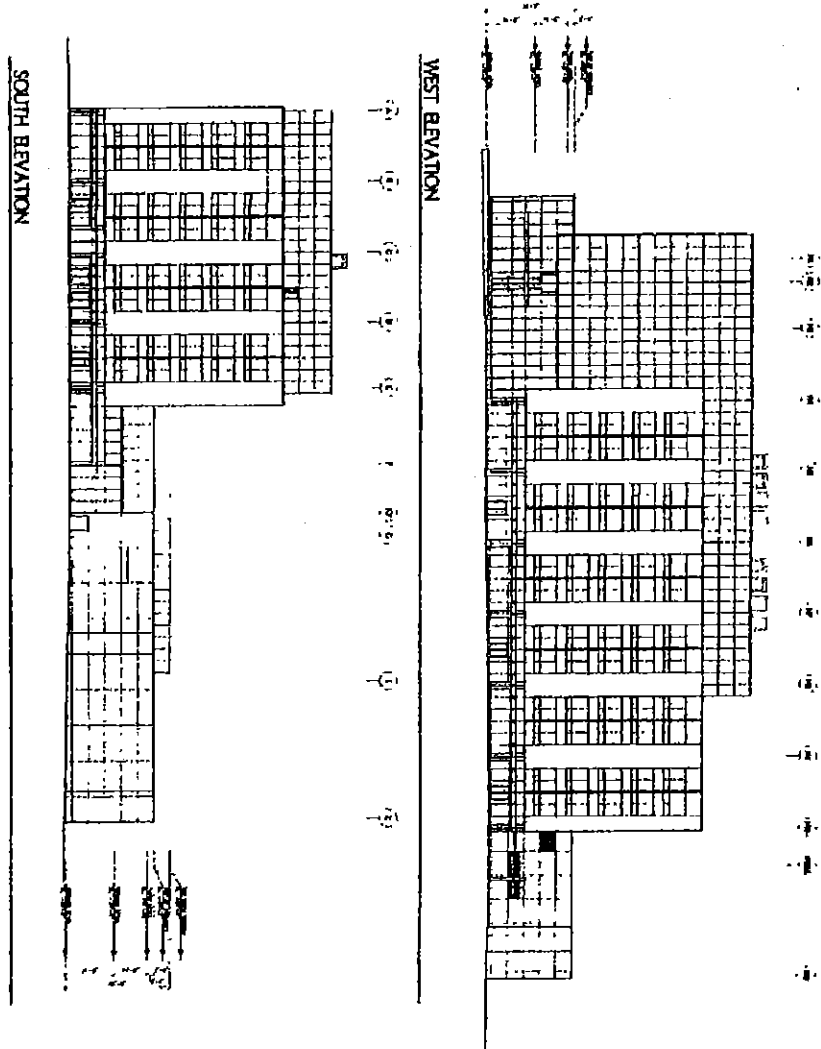
**Project Plan**

**[attached]**

C-1

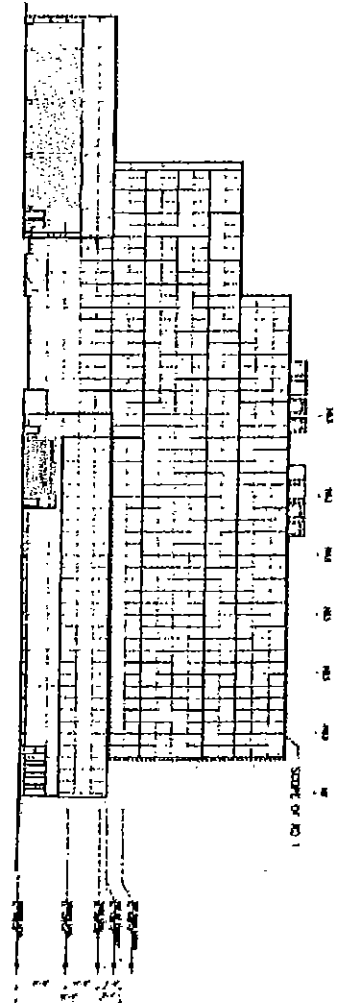


Exhibit C to Amended and Restated Ground Lease  
(Project Plan)

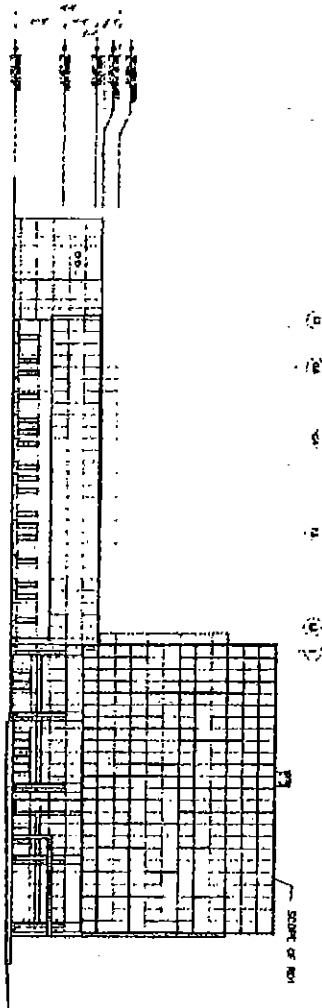




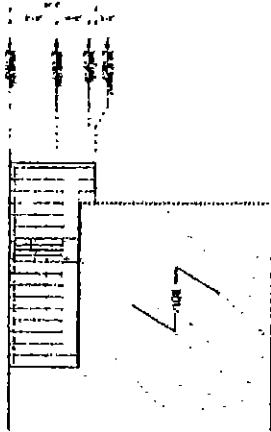
# EAST ELEVATION



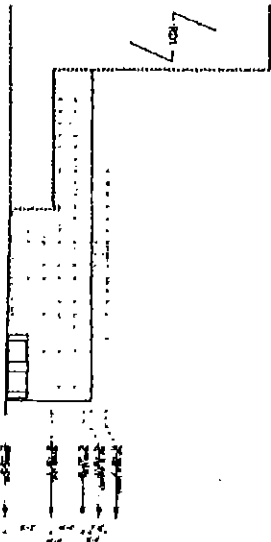
# NORTH ELEVATION



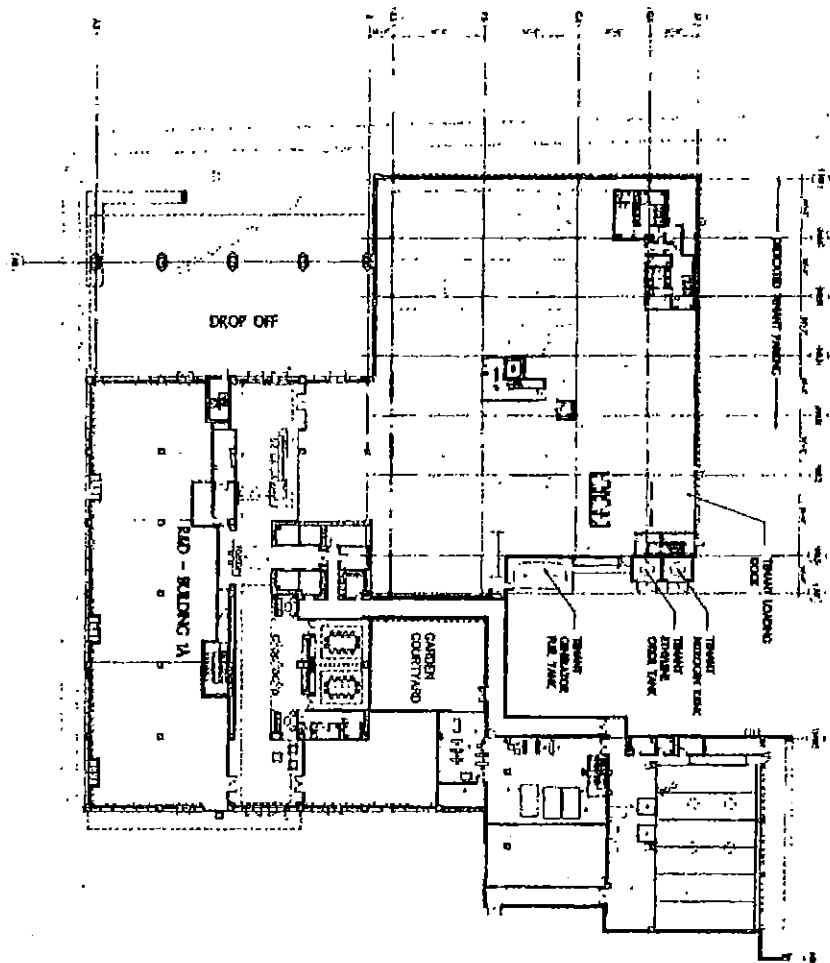
# PARTIAL WEST ELEVATION



# PARTIAL SOUTH ELEVATION

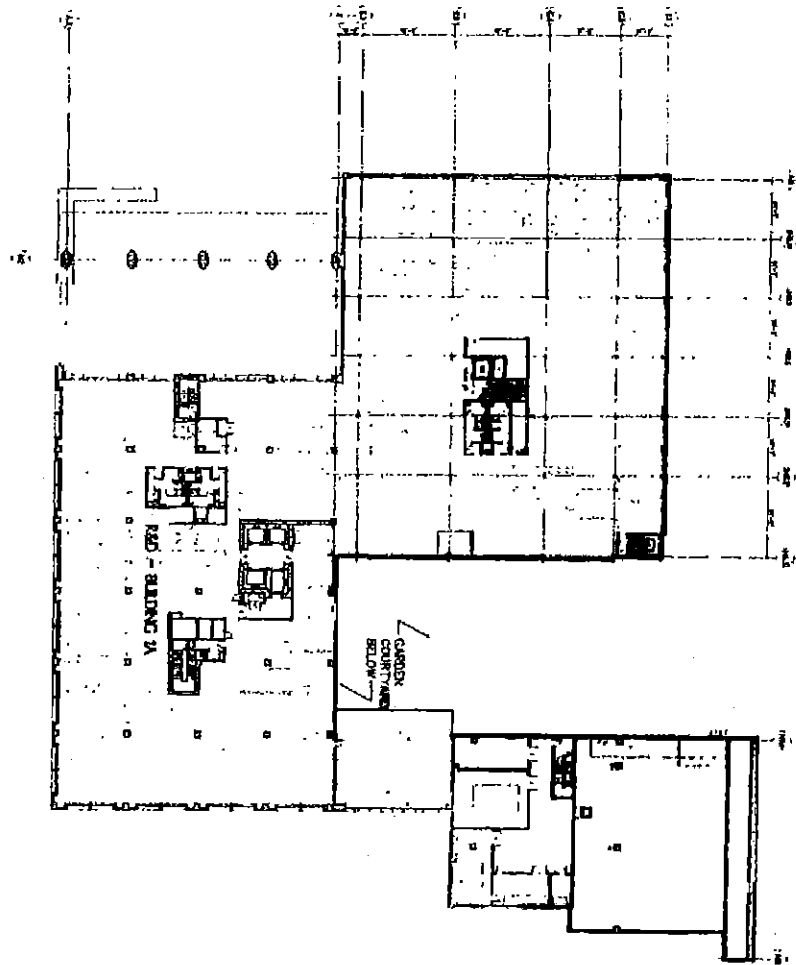






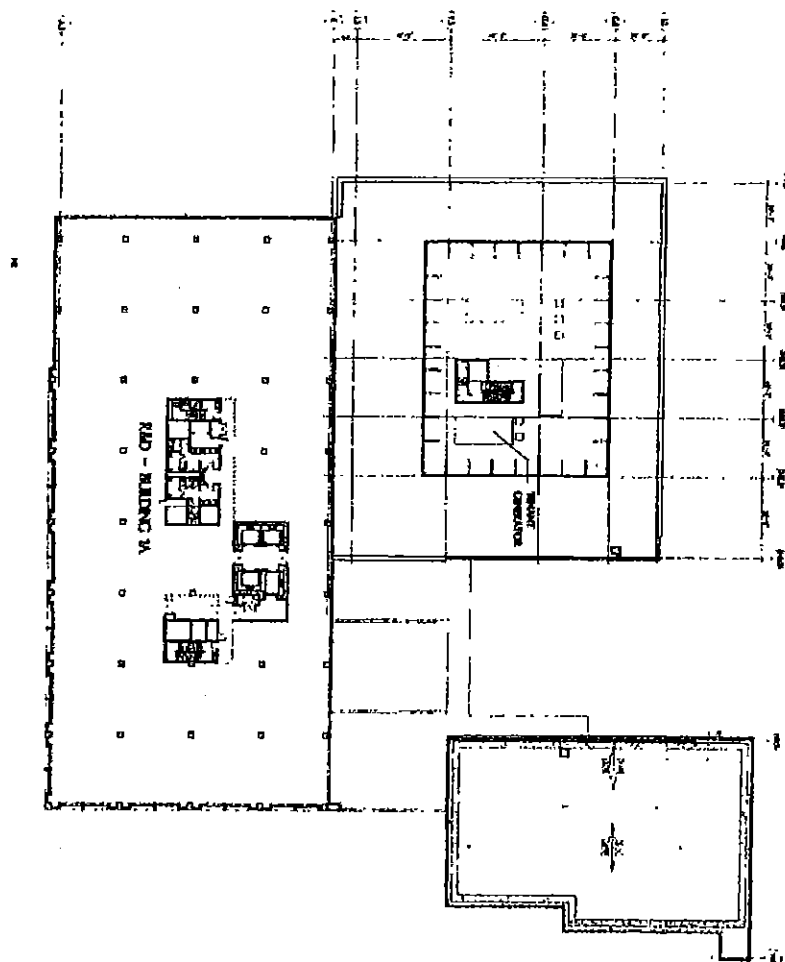


SECOND LEVEL PLAN



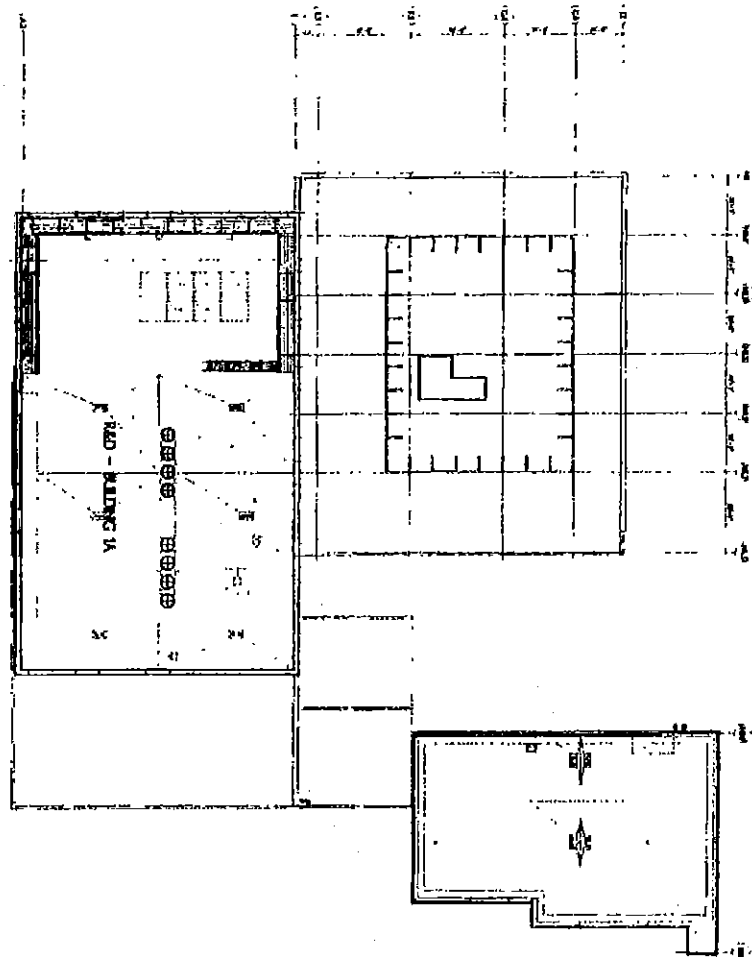


THIRD LEVEL / EXPANSION ROOF PLAN





ROOF PLAN





**Exhibit "D"**

**Legal Description of Tower Land**

[SEE ATTACHED]



### LEGAL DESCRIPTION OF TOWER LAND

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 7, 8 AND 9, TOGETHER WITH THOSE PORTIONS OF N.W. 19<sup>TH</sup> TERRACE (WITH A PART OF SAID N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI RESOLUTION NUMBER R-09-0441 AS ADOPTED ON SEPTEMBER 24, 2009), N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY (WITH SAID N.W. 6<sup>TH</sup> PLACE, THE UN-NAMED 15-FOOT WIDE ALLEY AND A PART OF N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA), ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 AND THE CENTERLINE OF N.W. 20<sup>TH</sup> STREET FOR 61.21 FEET; THENCE DEPARTING SAID NORTH LINE OF THE NORTHWEST ¼ OF SECTION 36, S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20<sup>TH</sup> STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, WITH SAID POINT OF INTERSECTION BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE N87°45'20"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE NORTHERLY LINE OF BLOCK 8, AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION" FOR 118.21 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE NORTHERLY LINE OF BLOCK 8, S01°01'34"E FOR 201.83 FEET; THENCE N88°58'26"E FOR 64.67 FEET; THENCE S01°01'34"E FOR 54.50 FEET; THENCE N88°58'26"E FOR 125.50 FEET; THENCE S01°01'34"E FOR 108.33 FEET; THENCE S88°58'26"W FOR 330.00 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7<sup>TH</sup> AVENUE) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED AUGUST 18, 1999 IN ROAD PLAT BOOK 152 AT PAGE 9 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE N01°04'03"W ALONG SAID PARALLEL LINE FOR 66.83 FEET TO A POINT OF INTERSECTION WITH THE CENTERLINE OF N.W. 19<sup>TH</sup> TERRACE AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION;" THENCE S87°47'07"W ALONG SAID CENTERLINE OF N.W. 19<sup>TH</sup> TERRACE FOR 2.93 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 37.50 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST ¼ OF SECTION 36; THENCE N00°59'38"W ALONG SAID PARALLEL LINE FOR 270.40 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO



THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 88°44'58" FOR 38.72 FEET TO THE POINT OF TANGENCY WITH SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE POINT OF BEGINNING.

LESS THEREFROM:

AIR RIGHTS PARCEL

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 7, 8 AND 9, TOGETHER WITH PORTIONS OF N.W. 6<sup>TH</sup> PLACE AND N.W. 19<sup>TH</sup> TERRACE, (WITH SAID N.W. 6<sup>TH</sup> PLACE AND N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA), ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, HAVING FOR ITS LOWER LIMITS AN ELEVATION OF +58.50 FEET AS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29), THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 389.78 FEET; THENCE S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO THE NORTHEAST CORNER OF LOT 4 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION;" THENCE S87°45'20"W ALONG THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20<sup>TH</sup> STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA AND THE NORTHERLY LINE OF SAID BLOCK 9 FOR 20.15 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE NORTHERLY LINE OF BLOCK 9, S01°01'34"E FOR 260.37 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE CONTINUE S01°01'34"E FOR 108.33 FEET; THENCE S88°58'26"W FOR 137.34 FEET; THENCE N01°01'34"W FOR 108.33 FEET; THENCE N88°58'26"E FOR 137.34 FEET TO THE POINT OF BEGINNING.



**Exhibit "E"**

**Surrounding Area**

[To be attached in accordance with side letter of even date herewith  
between Ground Lessor and Ground Lessee]



**SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
UNIVERSITY OF MIAMI  
EXHIBIT E-1  
LIFE SCIENCE PARK  
CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA**

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 5, 6, 7, 8 AND 9, TOGETHER WITH PORTIONS OF N.W. 18<sup>TH</sup> STREET, N.W. 19<sup>TH</sup> STREET, N.W. 19<sup>TH</sup> TERRACE, (WITH A PART OF SAID N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI RESOLUTION NUMBER R-09-0441 AS ADOPTED ON SEPTEMBER 24, 2009), N.W. 6<sup>TH</sup> PLACE AND THE UN-NAMED 15-FOOT WIDE ALLEY (WITH SAID N.W. 18<sup>TH</sup> STREET, N.W. 19<sup>TH</sup> STREET, N.W. 6<sup>TH</sup> PLACE, THE UN-NAMED 15-FOOT WIDE ALLEY AND A PART OF N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA), ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 AND THE CENTERLINE OF N.W. 20<sup>TH</sup> STREET FOR 61.21 FEET; THENCE DEPARTING SAID NORTH LINE OF THE NORTHWEST ¼ OF SECTION 36, S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20<sup>TH</sup> STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, WITH SAID POINT OF INTERSECTION BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE N87°45'20"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND THE NORTHERLY LINES OF LOTS 11 THROUGH 15, BLOCK 8, THE 15-FOOT WIDE ALLEY, N.W. 6<sup>TH</sup> PLACE AND LOTS 1 THROUGH 4, BLOCK 9, AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION" FOR 328.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 4 IN BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION;" THENCE S01°12'22"E ALONG THE EASTERLY LINE OF SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION" AND THE LIMITED ACCESS RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 9 (I-95) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED MARCH 13, 1968 IN ROAD PLAT BOOK 83 AT PAGE 21 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA FOR 797.08 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 IN BLOCK 9 AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION" AND DESCRIBED AS A NORTHERLY BOUNDARY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN WARRANTY DEED FROM DREAMLAND INVESTMENTS CORPORATION TO BETTER WAY OF MIAMI, INC., DATED MAY 9, 1995 AND RECORDED MAY 11, 1995 IN OFFICIAL RECORDSBOOK 16780 AT PAGE 1090 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA (HEREINAFTER, "THE BETTER WAY OF MIAMI, INC. PROPERTY"); THENCE S87°41'36"W ALONG SAID NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 AND SAID NORTHERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY FOR 87.03 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST 10 FEET OF LOTS 24, 23 AND A PORTION OF LOT 22 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION," THIS LINE ALSO BEING A WESTERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC. PROPERTY; THENCE S01°00'39"E ALONG SAID EAST LINE OF



THE WEST 10 FEET OF LOTS 24, 23 AND A PORTION OF LOT 22 AS WELL AS SAID WESTERLY BOUNDARY LINE OF THE BETTER WAY OF MIAMI, INC. PROPERTY FOR 108.03 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID LOT 24 IN BLOCK 9; THENCE S87°41'00"W ALONG SAID SOUTH LINE OF LOT 24 AND A NORTHERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC. PROPERTY FOR 10.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 24; THENCE S01°00'39"E ALONG THE WESTERLY LINE OF BLOCK 9 AND A WESTERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC. PROPERTY FOR 387.35 FEET TO A POINT OF INTERSECTION WITH THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID BLOCK 9; THENCE N78°00'29"W FOR 46.18 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF LOT 18 IN SAID BLOCK 5 WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 18; THENCE S87°37'00"W ALONG THE SOUTHERLY LINES OF LOTS 18 AND 17 IN SAID BLOCK 5, THE NORTHERLY RIGHT OF WAY LINE OF N.W. 17TH STREET AND THE WESTERLY PROLONGATION OF SAID LINE FOR 114.96 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN SAID BLOCK 5; THENCE N01°02'21"W ALONG THE WESTERLY LINE OF SAID 15-FOOT WIDE ALLEY FOR 326.34 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN SAID BLOCK 6; THENCE S87°44'27"W ALONG THE SOUTHERLY LINE OF SAID LOT 1 IN BLOCK 6 AND THE NORTHERLY RIGHT OF WAY LINE OF N.W. 18TH STREET FOR 74.58 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST; THENCE NORTHWESTERLY ALONG SAID SOUTHERLY LINE OF SAID LOT 1 IN BLOCK 6, THE NORTHERLY RIGHT OF WAY LINE OF N.W. 18TH STREET AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 54°19'19" FOR 23.70 FEET TO A POINT OF NON-TANGENT INTERSECTION WITH A LINE LYING 5 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 7 (U.S. HIGHWAY NUMBER 441/N.W. 7TH AVENUE) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED AUGUST 18, 1999 IN ROAD PLAT BOOK 152 AT PAGE 9 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WITH SAID POINT OF NON-TANGENT INTERSECTION BEARING S52°03'46"W FROM THE CENTER OF SAID CURVE; THENCE N01°04'03"W ALONG SAID PARALLEL LINE FOR 649.93 FEET TO POINT OF INTERSECTION WITH THE CENTERLINE OF SAID N.W. 19TH TERRACE, THENCE S87°47'07"W ALONG SAID CENTERLINE OF N.W. 19TH TERRACE FOR 2.93 FEET A POINT OF INTERSECTION WITH A LINE LYING 37.50 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH SAID WEST LINE OF THE NORTHWEST ¼ OF SECTION 36, THENCE N00°59'38"W ALONG SAID PARALLEL LINE FOR 270.40 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 88°44'58" FOR 38.72 FEET TO THE POINT OF TANGENCY WITH SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20TH STREET AND THE POINT OF BEGINNING.



**Exhibit "F"**

**Form Commencement Date Letter**

Date \_\_\_\_\_

Re: Commencement Letter with respect to that certain Amended and Restated Ground Lease dated as of February \_\_, 2010 by and between University of Miami and 7th Ave Market, LLC, collectively as Ground Lessor, and Wexford Miami, LLC, as Ground Lessee.

Dear \_\_\_\_\_:

In accordance with the terms and conditions of the above referenced Lease, Ground Lessor and Ground Lessee agree as follows:

The Rent Commencement Date of the Lease is \_\_\_\_\_;

The Expiration Date of the Lease is \_\_\_\_\_.

Further, the Variable Land Base Rent for the first twelve month period commencing on the Rent Commencement Date is \$690,000.00 and attached is a schedule of the annual escalations of the Variable Land Base Rent for the Term.

Please acknowledge your agreement to the terms set forth above by signing all three (3) copies of this Commencement Letter in the space provided and returning two (2) fully executed copies of the same to the attention of the undersigned.

Sincerely,

**UNIVERSITY OF MIAMI, a Florida non-profit corporation**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**7th AVE MARKET, LLC, a Florida limited liability company**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Agreed and Accepted:

**WEXFORD MIAMI, LLC, a Delaware limited liability company**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Variable Land Base Rent and Annual Escalations**




**Exhibit G**

**Legal Description of Access Drive**

[SEE ATTACHED]

G-1



#### LEGAL DESCRIPTION OF ACCESS DRIVE

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING A PORTION OF BLOCK 9 AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 389.78 FEET; THENCE S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO THE NORTHEAST CORNER OF LOT 4 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION," WITH SAID NORTHEAST CORNER OF LOT 4 IN BLOCK 9 ALSO BEING THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE S01°12'22"E ALONG THE EASTERLY LINE OF SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION" AND THE LIMITED ACCESS RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 9 (I-95) AS SHOWN ON THE RIGHT OF WAY MAP RECORDED MARCH 13, 1968 IN ROAD PLAT BOOK 83 AT PAGE 21 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA FOR 797.08 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 IN BLOCK 9 AS SHOWN ON SAID PLAT OF "ROBERTS AND GRENTNER ADDITION" AND DESCRIBED AS A NORTHERLY BOUNDARY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN WARRANTY DEED FROM DREAMLAND INVESTMENTS CORPORATION TO BETTER WAY OF MIAMI, INC., DATED MAY 9, 1995 AND RECORDED MAY 11, 1995 IN OFFICIAL RECORDS BOOK 16780 AT PAGE 1090 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA (HEREINAFTER, "THE BETTER WAY OF MIAMI, INC. PROPERTY"); THENCE DEPARTING SAID EASTERLY LINE OF BLOCK 9 AND THE WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF FLORIDA STATE ROAD NUMBER 9-A (I-95), S87°41'36"W ALONG SAID NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 IN BLOCK 9 AND THE NORTHERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC. PROPERTY FOR 22.66 FEET; THENCE DEPARTING SAID NORTH LINE OF THE SOUTH 28 FEET OF LOT 22 AND THE NORTHERLY BOUNDARY LINE OF SAID BETTER WAY OF MIAMI, INC. PROPERTY, N01°01'34"W FOR 797.15 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF SAID BLOCK 9 AND THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20TH STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA; THENCE N87°45'20"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20TH STREET AND THE NORTHERLY LINE OF SAID BLOCK 9 FOR 20.15 FEET TO THE POINT OF BEGINNING.



**Exhibit H**

**Legal Description of Expansion Land**

[SEE ATTACHED]

H-1

126



#### LEGAL DESCRIPTION OF EXPANSION LAND

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 8 AND 9, TOGETHER WITH A PORTION OF N.W. 6<sup>TH</sup> PLACE, (WITH SAID N.W. 6<sup>TH</sup> PLACE HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA) ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRETNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 389.78 FEET; THENCE S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO THE NORTHEAST CORNER OF LOT 4 IN SAID BLOCK 9 OF "ROBERTS AND GRETNER ADDITION;" THENCE S87°45'20"W ALONG THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20<sup>TH</sup> STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA AND THE NORTHERLY LINE OF SAID BLOCK 9 FOR 20.15 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, AND DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET, THENCE S01°01'34"E FOR 260.37 FEET; THENCE S88°58'26"W FOR 125.50 FEET; THENCE N01°01'34"W FOR 54.50 FEET; THENCE S88°58'26"W FOR 64.67 FEET; THENCE N01°01'34"W FOR 201.83 FEET TO A POINT OF INTERSECTION WITH SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE NORTHERLY LINE OF SAID BLOCK 8; THENCE N87°45'20"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET FOR 190.21 FEET TO THE POINT OF BEGINNING.



**Exhibit I**

**Legal Description of Air Parcel**

[SEE ATTACHED]



**LEGAL DESCRIPTION OF AIR RIGHTS PARCEL**

ALL THAT LOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN SECTION 36, TOWNSHIP 53 SOUTH, RANGE 41 EAST, CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA, BEING PORTIONS OF BLOCKS 7, 8 AND 9, TOGETHER WITH PORTIONS OF N.W. 6<sup>TH</sup> PLACE AND N.W. 19<sup>TH</sup> TERRACE, (WITH SAID N.W. 6<sup>TH</sup> PLACE AND N.W. 19<sup>TH</sup> TERRACE HAVING BEEN VACATED BY CITY OF MIAMI ORDINANCE NUMBER 692, AS ADOPTED ON DECEMBER 6, 1926 AND RECORDED APRIL 16, 2009 IN OFFICIAL RECORDS BOOK 26831 AT PAGE 2796 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA), ALL AS SHOWN ON THE PLAT OF "ROBERTS AND GRENTNER ADDITION," ACCORDING TO THE PLAT THEREOF, AS RECORDED JANUARY 19, 1925 IN PLAT BOOK 10 AT PAGE 56 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, HAVING FOR ITS LOWER LIMITS AN ELEVATION OF +58.50 FEET AS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29), THE SAME BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VIZ.:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 36; THENCE N87°45'20"E ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 36 FOR 389.78 FEET; THENCE S02°14'40"E AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE FOR 35.00 FEET TO THE NORTHEAST CORNER OF LOT 4 IN SAID BLOCK 9 OF "ROBERTS AND GRENTNER ADDITION;" THENCE S87°45'20"W ALONG THE SOUTHERLY RIGHT OF WAY LINE OF NORTHWEST 20<sup>TH</sup> STREET AS SHOWN ON THE RIGHT OF WAY MAP RECORDED IN ROAD PLAT BOOK 83 AT PAGE 30 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA AND THE NORTHERLY LINE OF SAID BLOCK 9 FOR 20.15 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE OF N.W. 20<sup>TH</sup> STREET AND THE NORTHERLY LINE OF BLOCK 9, S01°01'34"E FOR 260.37 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; FROM SAID POINT OF BEGINNING, THENCE CONTINUE S01°01'34"E FOR 108.33 FEET; THENCE S88°58'26"W FOR 137.34 FEET; THENCE N01°01'34"W FOR 108.33 FEET; THENCE N88°58'26"E FOR 137.34 FEET TO THE POINT OF BEGINNING.



#### Schedule 2.2.5

1. All rights of the public over, under and in such public right-of-way known as that portion of NW 19th Terrace located within the boundaries of the Property; all matters set forth in the City of Miami resolution that will ultimately approve the vacation and closure of such public right-of-way; and all easements, reservations, conditions, dedications and other matters which may be contained in the plat that will ultimately vest title to the public-right-way in the Owner.
2. Restrictions, easements, reservations, and dedications as set forth on the Plat of ROBERTS AND GRETNER ADDITION, recorded in Plat Book 10, at Page 56, of the Public Records of Miami-Dade County, Florida.
3. Restrictions contained in Covenant Running with the Land dated February 2, 1987 and recorded February 8, 1987 in Official Records Book 13172, Page 2029, of the Public Records of Miami-Dade County, Florida.
4. Reservation of oil, gas and other minerals as set forth in Deed by Shell Oil Company recorded in Official Records Book 18316, Page 1488, of the Public Records of Miami-Dade County, Florida, as affected by Quit Claim Deed to Motiva Enterprises LLC recorded August 26, 2008 in Official Records Book 26539, Page 656 and Quit Claim Deed to 7<sup>th</sup> Ave Market, LLC recorded August 26, 2008 in Official Records Book 26539, Page 660.
5. Restrictive Covenant set forth in Special Warranty Deed with Restrictive Covenant dated August 11, 2008 and recorded August 26, 2008 in Official Records Book 26539, Page 664, of the Public Records of Miami-Dade County, Florida.
6. Access Agreement Granting Right of Entry between Motiva Enterprises LLC and 7<sup>th</sup> Ave Market, LLC dated August 19, 2008 and recorded August 26, 2008 in Official Records Book 26539, Page 677, of the Public Records of Miami-Dade County, Florida.
7. Covenants and restrictions contained in Quit Claim Deed to University of Miami recorded April 23, 2009 in Official Records Book 26839, Page 2735.
8. Declaration of Restrictive Covenants in Lieu of Unity of Title by and between 7<sup>th</sup> Ave Market, LLC and University of Miami recorded June 22, 2009 in Official Records Book 26911, Page 2255.



**Schedule 6.1**

**Construction Documents**

**SECTION 1:**

1. Fixed Price Or GMP GC Contract with the GC (as defined in the Development Agreement).
2. Unconditional Payment and Performance Bonds.
3. All Land Use Approvals.

**SECTION 2:**

1. Fixed Price or GMP GC Contract acceptable to Ground Lessor (which consent shall be given or withheld within thirty (30) days of request therefor) with a general contractor acceptable to Ground Lessor.
2. Unconditional payment and performance bonds.
3. An itemized budget for all soft and hard costs.
4. All authorizations, approvals, permits and building permits from all appropriate governmental authorities and evidence that same remain in effect and that the period of time within which such same may be contested has expired.
5. An agreement acceptable to Ground Lessor (which consent shall be given or withheld within thirty (30) days of request therefor) with an architect acceptable to Ground Lessor.\*
6. An assignment of Ground Lessee's right, title, interest and benefits in or under any agreements with the general contractor, which assignment shall be consented to by the general contractor, shall be subject to the rights of those Qualified Mortgagees to whom a similar conditional assignment is provided and shall be exercisable by the Ground Lessor only after an Event of Ground Lessee's Default. If any Qualified Mortgagee demands in writing after discussion with the Ground Lessor that any such conditional assignment be released, then the Ground Lessor shall release same. Ground Lessee shall cause the general contractor and all of its subcontractors to adhere to the Ground Lessor's guidelines for hiring contractors attached as Schedule 2.8 to the Development Agreement.

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If the job has been bid out in a reasonable and customary manner to at least three third-party contractors or architects, as the case may be, Ground Lessor shall not have the right to object to any economic terms or scope of work contained in any such contract or agreement.



7. An assignment of Ground Lessee's right, title, interest and benefits in or under any agreements with the Project Architect and all plans and other documents prepared by the architect, which assignment shall be consented to by the architect, shall be subject to the rights of those Qualified Mortgagees to whom a similar conditional assignment is provided and shall be exercisable by Ground Lessor only after an Event of Ground Lessee's Default. If any Qualified Mortgagee demands in writing after discussion with Ground Lessor that any such conditional assignment be released, then Ground Lessor shall release same.



### Schedule 12.4.3

#### Leasing Guidelines

Each and every Qualifying Sublease shall provide, in effect, that or shall include the following:

(i) the term of such Qualifying Sublease shall not end later than one day prior to the Term Expiration Date of this Lease;

(ii) an executed copy of such Qualifying Sublease shall be delivered to Landlord within thirty (30) days of the execution thereof;

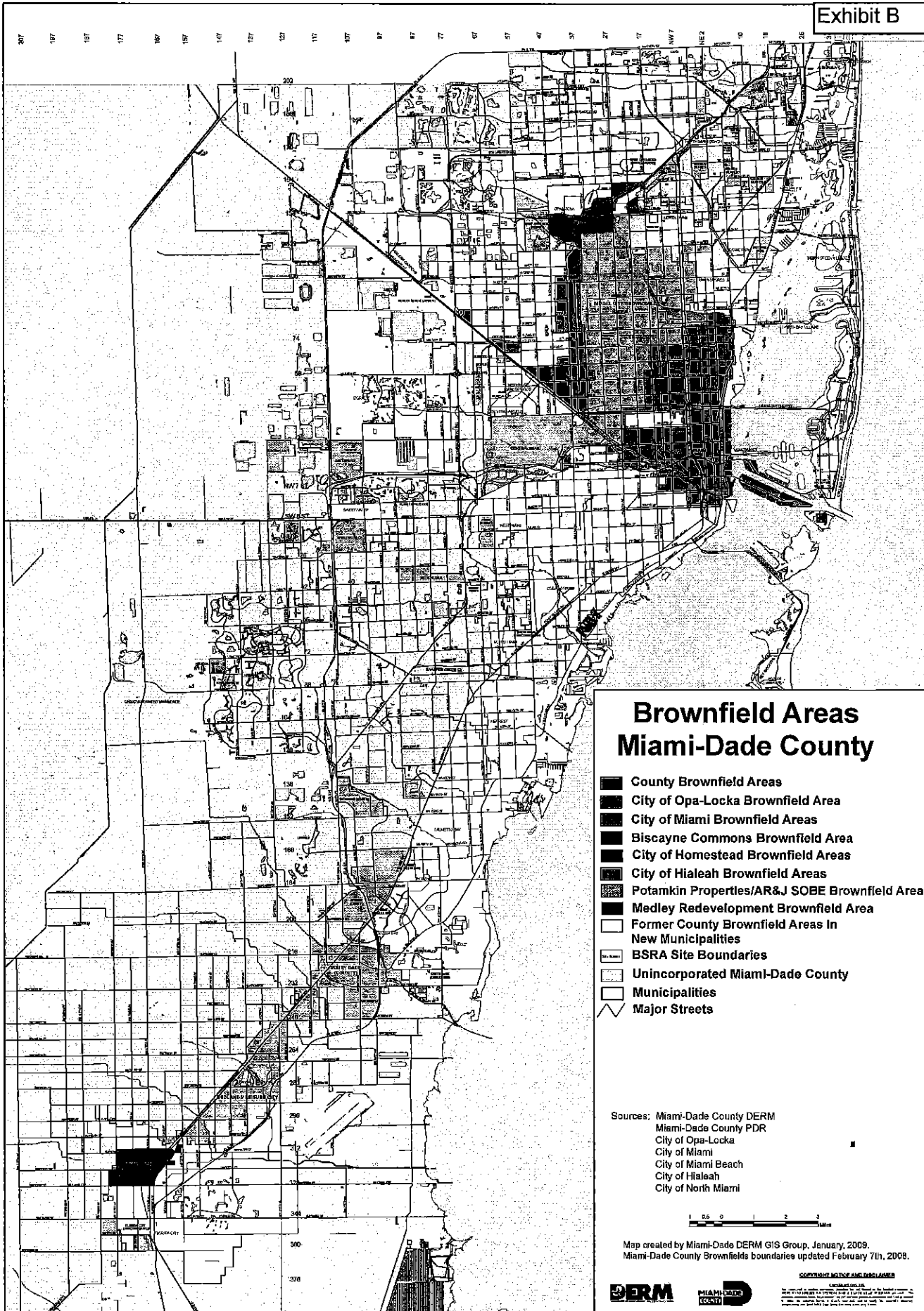
(iii) such Qualifying Sublease shall be subject and subordinate to this Lease, to all of the terms, covenants, conditions, provisions, agreements and conditions contained in this Lease and to the matters to which this Lease is or shall be subordinate, so that, without limitation, all of the terms with which Ground Lessee is bound to comply under this Lease shall be binding upon the subtenant with respect to the subleased premises, including without limitation, the restrictions on use, prohibitions on encumbrances on the interest of Ground Lessor in the Property, the Improvements and the Surrounding Area and the rights of Ground Lessor to enter onto the subleased premises;

(iv) the Qualifying Subtenant shall not pay its monthly payment of Rent more than thirty (30) days in advance of when due;

(v) Qualifying Subtenant other than the University shall not use the name "University of Miami" or any words or phrases similar thereto or suggesting any affiliation with the University of Miami (except in connection with Qualifying Subtenant's street address or other reference relating to location) without the prior written consent of Ground Lessor; and

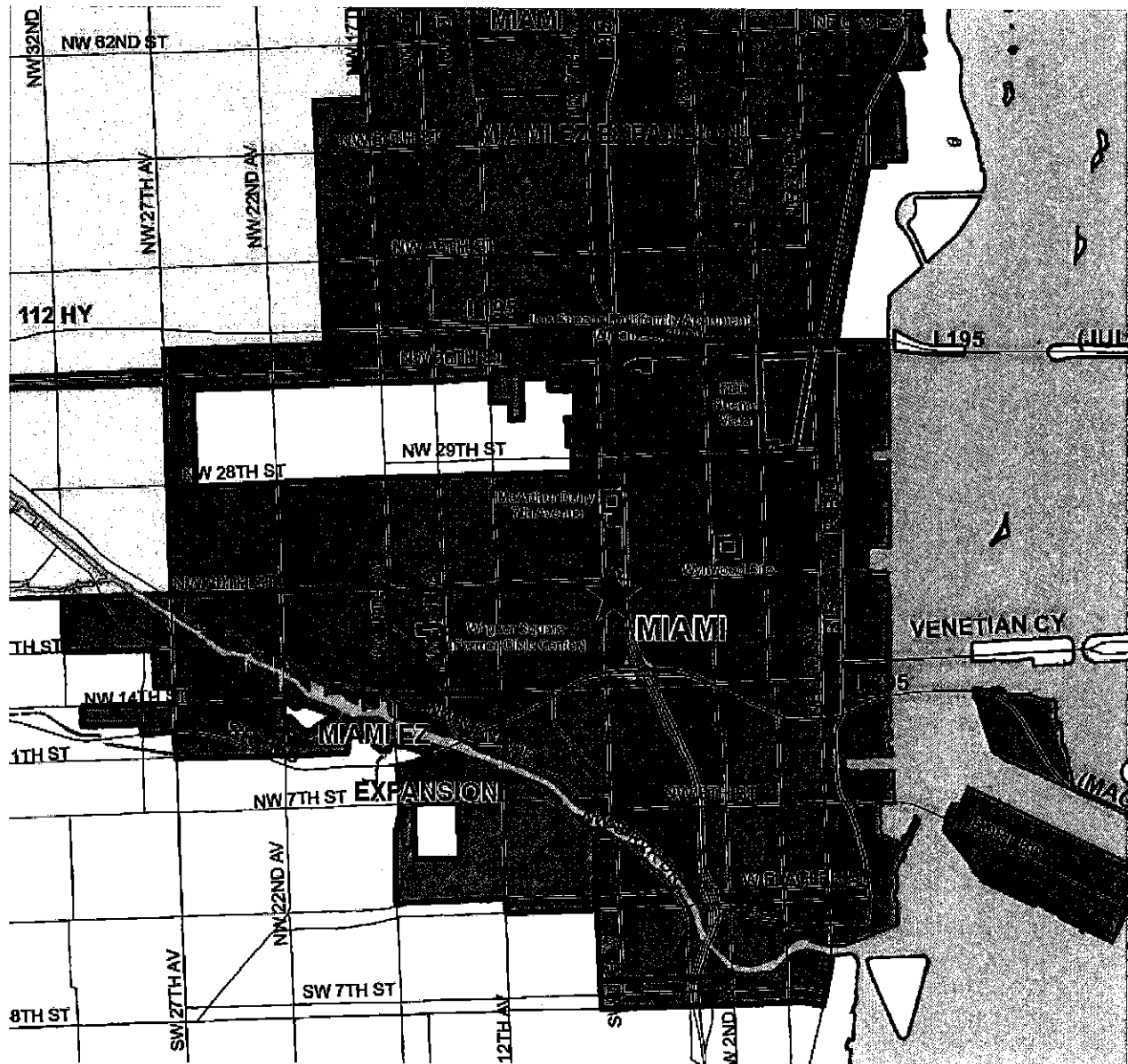
(vi) any and all provisions, notifications and/or disclosures required by any applicable Governmental Authority;







Miami-Dade County Brownfield Areas  
City of Miami Brownfield Area



★ UM LSTP Building 2



Exhibit C



PERSPECTIVE VIEW

**7**  
NICKHOFF  
RESEARCH  
WURST  
WOLFF  
ARCHITECTS

BUILDING 2 - PROPOSED HOTEL & CLINICAL OFFICES  
*Life Sciences Building*  
Miami, Florida

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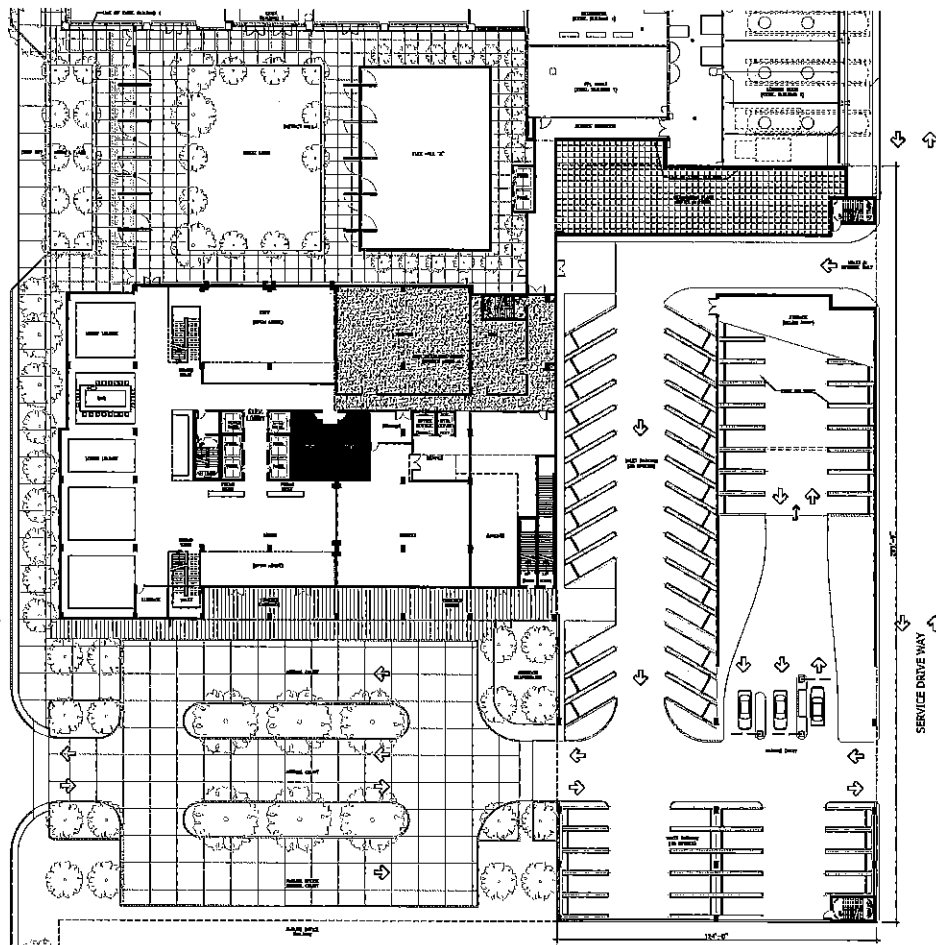
**GROUND LEVEL PLAN**

SCALE: 1/16" = 1'-0"

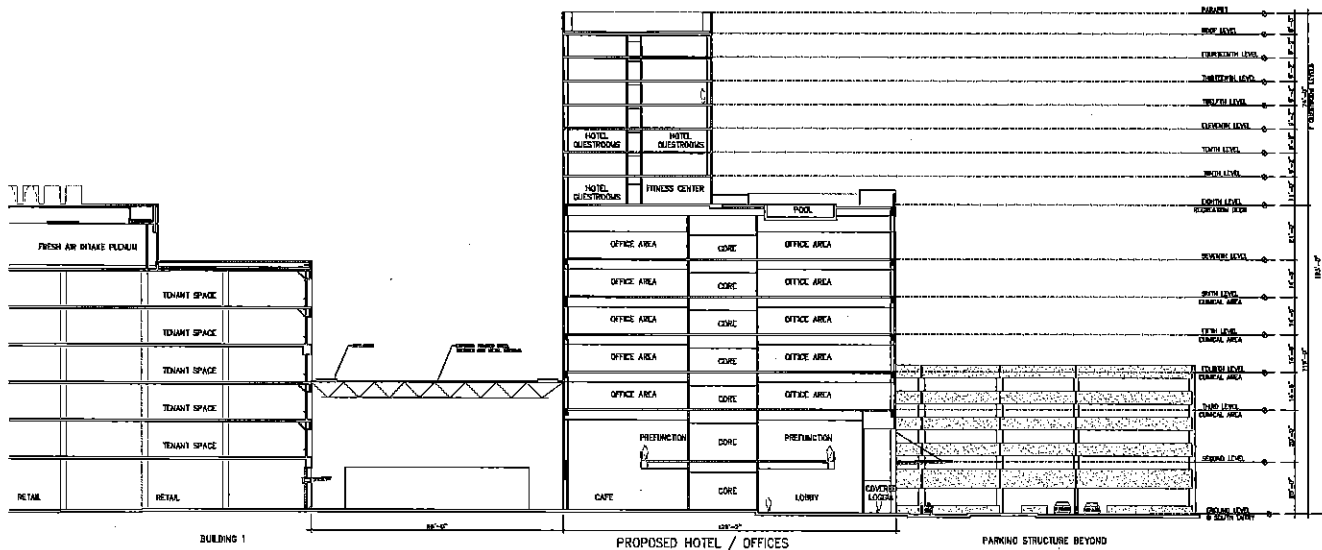
0 8' 16' 32' 54'

• GROSS CONDITIONED AREA  
THIS LEVEL - 22,641 sq.ft.

• RAIN GARDEN/PLEX HALL AREA -  
15,214 sq.ft.







BUILDING SECTION  
SCALE: 1/8" = 1'-0"  
0' 6" 12" 24" 48"

**7**

ARCHITECTS, INC.  
Architects & Planners

BUILDING 2 - PROPOSED HOTEL & CLINICAL OFFICES  
*Life Sciences Building*  
Miami, Florida

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**MEMO**

**TO:** Theresa White  
Development & Finance Project Manager  
Cross Street Partners  
2031 Clipper Park Rd., Ste. 105  
Baltimore, MD 21211

**FROM:** Hank Fishkind, Ph.D., President  
Steven Schriever, Sr. Associate

**SUBJECT:** Wexford TIF – Overtown CRA Economic Impact

**DATE:** June 22, 2015

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**1.0 Scope of Work**

Wexford Science & Technology, LLC ("Wexford") was selected by the University of Miami ("UM") as the master developer for its Life Science & Technology Park ("Park"). The Park comprises +/- 7 acres in UM's Health District. The Park is planned for 1.6 million square feet commercial, lab, and technology space. Wexford completed Building 1 in 2011.

Wexford is planning a transformation of Building 1 into a technology hub by: (a) bringing in Cambridge Innovation Center ("CIC") as the anchor tenant; (b) transforming the first floor into a dedicated civic space serving as magnet for entrepreneurial innovators; (c) establishing the Miami District Hall on the ground floor of Building 1 under the auspices of CIC's Venture Café Foundation; (d) improving the 3<sup>rd</sup> floor; and (e) build out of the 6<sup>th</sup> floor to house CIC. In addition, Wexford is planning the construction of a second building which will house additional innovation space and office space, as well as a 148-key hotel. Connecting the two buildings will be a public innovation space that will serve as a gathering point for the greater community.

In order to accomplish this transformation Wexford plans to pursue a public-private partnership to help mitigate the high up-front costs of the innovation space and make the projects economically feasible. In support of a public-private partnership, Wexford is interested in measuring the economic impact of the transformation.



## 2.0 Economic Impacts

Using the RIMSII economic multipliers for Miami-Dade County developed by the U.S. Bureau for Economic Analysis, the following economic impacts expected to occur during the construction periods of each building have been calculated and are shown in Tables 1 through 3. The construction period for Building 1 was 10 months and the construction period for Building 2 is projected to be 18 months. The appendix table shows the detailed calculations.

**Table 1. Building 1 Construction Impacts**

<i><b>Building 1 Construction Impacts</b></i>	
Direct FTE Jobs	60
Direct Wages	\$3,490,669
Direct Output	\$6,230,000
Total FTE Jobs	116
Total Wages	\$6,331,375
Total Output	\$12,425,735

**Table 2. Building 2 Construction Impacts**

<i><b>Building 2 Construction Impacts</b></i>	
Direct FTE Jobs	600
Direct Wages	\$43,958,034
Direct Output	\$78,454,460
Total FTE Jobs	1,156
Total Wages	\$79,731,082
Total Output	\$156,477,420

**Table 3. Total Construction Impacts**

<i><b>Total Construction Impacts</b></i>	
Direct FTE Jobs	660
Direct Wages	\$47,448,703
Direct Output	\$84,684,460
Total FTE Jobs	1,272
Total Wages	\$86,062,457
Total Output	\$168,903,155



As Table 3 shows, Wexford will generate a significant economic benefit for the County during construction with a total of 1,272 direct and indirect FTE jobs, \$168.9 million in economic output and \$86.0 million in wages.

The permanent economic impacts are very impressive as well and are showing in Table 4 through 6.

**Table 4. Building 1 Annual Economic Impacts**

<i><b>Building 1 Annual Operational Impacts</b></i>	
Direct FTE Jobs	601
Direct Wages	\$39,267,667
Direct Output	\$94,974,066
Total FTE Jobs	1,151
Total Wages	\$62,796,853
Total Output	\$186,310,626

**Table 5. Building 2 Annual Economic Impacts**

<i><b>Building 2 Annual Operational Impacts</b></i>	
Direct FTE Jobs	476
Direct Wages	\$28,254,230
Direct Output	\$69,881,794
Total FTE Jobs	868
Total Wages	\$45,265,095
Total Output	\$137,087,114

**Table 6. Total Annual Economic Impacts**

<i><b>Total Annual Operational Impacts</b></i>	
Direct FTE Jobs	1,078
Direct Wages	67,521,897
Direct Output	164,855,860
Total FTE Jobs	2,020
Total Wages	\$108,061,948
Total Output	\$323,397,740

Together, Buildings 1 & 2 are expected to generate 2,020 FTE jobs, \$323.3 million in economic output annually, and \$108.0 million in annual wages for Miami-Dade County.



**Appendix Table 1: Economic Model Assumptions**

	<u>SF</u>	<u>SF/Emp</u>	<u>FTE Emp</u>	<u>Wage</u>	<u>Direct Wages</u>
<b>Building 1</b>					
CIC	73,000	300	243	\$73,100	\$17,787,667
Office	179,000	500	358	\$60,000	\$21,480,000
Building 1 Totals	252,000		601		\$39,267,667
<b>Building 1</b>					
	<u>SF</u>	<u>SF/Emp or Emp/Room</u>	<u>FTE Jobs</u>	<u>Wage</u>	<u>Direct Wages</u>
CIC	72,810	300	243	\$73,100	\$17,741,370
Office	68,268	500	137	\$60,000	\$8,192,160
Hotel rooms	148	0.5	74	\$23,800	\$1,761,200
Bar/Food	5,700	300	19	\$24,500	\$465,500
Daycare	2,000	500	4	\$23,500	\$94,000
Total			476		\$28,254,230
Total Building 1 & 1			1,078		

**Dade County Multipliers**

	<u>Output</u>	<u>Final Demand</u> <u>Earnings</u>	<u>Jobs</u>	<u>Direct Effect</u> <u>Earnings</u>	<u>FTE Jobs</u>
Daycare	1.8485	0.4724	17.8288	1.7773	1.5447
Food Service/Drinking Places	1.9542	0.5768	29.9333	1.6304	1.2927
Accommodation	1.8031	0.5222	18.2657	1.6274	1.506
Professional, Tech, Scientific	1.9617	0.6612	16.0601	1.5992	1.9147
Construction	1.9945	0.5603	15.5894	1.8138	1.9267

**Building 1 Annual Operational Impacts**

Direct FTE Jobs	601
Direct Wages	\$39,267,667
Direct Output	\$94,974,066
Total FTE Jobs	1,151
Total Wages	\$62,796,853
Total Output	\$186,310,626

**Building 1 Construction Impacts**

Direct FTE Jobs	60
Direct Wages	\$3,490,669
Direct Output	\$6,230,000
Total FTE Jobs	116
Total Wages	\$6,331,375
Total Output	\$12,425,735

**Building 2 Annual Operational Impacts**

Direct FTE Jobs	476
Direct Wages	\$28,254,230
Direct Output	\$69,881,794
Total FTE Jobs	868
Total Wages	\$45,265,095
Total Output	\$137,087,114

**Building 2 Construction Impacts**

Direct FTE Jobs	600
Direct Wages	\$43,958,034
Direct Output	\$78,454,460
Total FTE Jobs	1,156
Total Wages	\$79,731,082
Total Output	\$156,477,420

Building 1 Improvement Costs	\$8,900,000
Building 2 Construction Costs	\$112,077,800
Local %	70%

**Total Annual Operational Impacts**

Direct FTE Jobs	1,078
Direct Wages	\$67,521,897
Direct Output	\$164,855,860
Total FTE Jobs	2,020
Total Wages	\$108,061,948
Total Output	\$323,397,740

**Total Construction Impacts**

Direct FTE Jobs	660
Direct Wages	\$47,448,703
Direct Output	\$84,684,460
Total FTE Jobs	1,272
Total Wages	\$86,062,457
Total Output	\$168,903,155



**Appendix Table 2: FTE Employment Projections**

<u>Occupation</u>	<u>Total Employees</u>	<u>Average Wage*</u>	<u>Avg. Benefits **</u>	<u>Avg. Benefits **</u>
Prof. Scientist	73	\$80,000	30.0%	\$24,000
Research Tech.	97	\$55,000	30.0%	\$16,500
Senior Management	24	\$125,000	30.0%	\$37,500
Admin Support	49	\$73,000	30.0%	\$21,900
Office	137	\$60,000	31.6%	\$18,960
Accommodation	74	\$23,800	19.0%	\$4,522
Restaurant/Daycare	<u>23</u>	\$24,500	19.0%	\$4,655
	476			

Sources:

\*Florida Department of Economic Opportunity, (Miami-Dade MSA specific)  
Bureau of Labor Market Statistics, June 2015.

\*\*Employer Costs for Employee Compensation; Bureau of Labor Statistics.  
Florida Occupational Employment and Wages, Florida DOE



Economic Development Fund Building Better Communities General Obligation Bond Program  
University of Miami Life Science and Technology Park Building 2 Hotel and Innovation Center  
July 21, 2015

### UM LSTP Building 2 Project Sources and Uses

#### SOURCES

Wexford Equity	\$ 17,120,445
Hotel Investor	\$ 32,588,488
Garage Investor	\$ 18,375,093
EDF 124 Funds	\$ 10,000,000
Federal NMTC Net Benefit	\$ 5,000,000
Construction Debt	\$ 28,983,774
<b>TOTAL PROJECT SOURCES</b>	<b>\$ 112,077,800</b>

#### USES

Hard Costs	Building	Public Innovation Space	Garage	Total	Disbursements	
					2017	2018
<b>General Contractor</b>						
<b>Trade Costs</b>						
Sitework	\$ 1,300,970	\$ 624,841	\$ 596,758	\$ 2,522,569	\$ 1,891,927	\$ 630,642
Concrete	\$ 9,376,887	\$ 302,525	\$ 6,305,777	\$ 15,985,189	\$ 11,988,892	\$ 3,996,297
Masonry	\$ 1,331,399	\$ 153,750	\$ 20,000	\$ 1,505,149	\$ 1,128,862	\$ 376,287
Metals	\$ 647,650	\$ 1,811,900	\$ 132,000	\$ 2,591,550	\$ 1,943,663	\$ 647,888
Woods & Plastics	\$ 316,621	\$ 10,000	\$ 21,704	\$ 348,325	\$ 261,244	\$ 87,081
Thermal & Moisture Protection	\$ 527,693	\$ 963,940	\$ 6,500	\$ 1,498,133	\$ 1,123,600	\$ 374,533
Doors & Windows	\$ 5,857,396	\$ 1,193,000	\$ 55,000	\$ 7,105,396	\$ 5,329,047	\$ 1,776,349
Finishes	\$ 5,026,547	\$ 655,280	\$ 476,230	\$ 6,158,057	\$ 4,618,543	\$ 1,539,514
Hotel Restaurant/1st Floor Fit Out	\$ 269,000			\$ 269,000	\$ 201,750	\$ 67,250
Specialties	\$ 178,140	\$ 20,000	\$ 42,000	\$ 240,140	\$ 180,105	\$ 60,035
Equipment	\$ -	\$ -	\$ 100,000	\$ 100,000	\$ 75,000	\$ 25,000
Furnishings	\$ 230,520	\$ -	\$ -	\$ 230,520	\$ 172,890	\$ 57,630
Special Construction	\$ 940,622	\$ 70,000	\$ -	\$ 1,010,622	\$ 757,967	\$ 252,656
Conveying Systems	\$ 1,631,980	\$ -	\$ 265,000	\$ 1,896,980	\$ 1,422,735	\$ 474,245
Mechanical	\$ 7,981,116	\$ 878,030	\$ 862,678	\$ 9,721,824	\$ 7,291,368	\$ 2,430,456
Electrical	\$ 3,998,179	\$ 394,868	\$ 481,632	\$ 4,875,679	\$ 3,656,759	\$ 1,218,920
<b>Subtotal</b>	<b>\$ 39,615,720</b>	<b>\$ 7,078,134</b>	<b>\$ 9,365,279</b>	<b>\$ 56,059,133</b>	<b>\$ 42,044,350</b>	<b>\$ 14,014,783</b>
<b>Overhead and A/E Add</b>						
General Conditions and Requirements	\$ 2,500,000	\$ 520,243	\$ 425,000	\$ 3,445,243	\$ 2,583,932.25	\$ 861,310.75
Fee	\$ 2,124,738	\$ 361,073	\$ 457,284	\$ 2,943,095	\$ 2,207,321.25	\$ 735,773.75
Builder Risk Insurance	\$ 316,882	\$ 59,424	\$ 74,121	\$ 450,427	\$ 337,820.25	\$ 112,606.75
General Liability Insurance	\$ 379,041	\$ 71,571	\$ 90,641	\$ 541,253	\$ 405,939.75	\$ 135,313.25
Construction Contingency	\$ 1,980,786	\$ 353,907	\$ 280,958	\$ 2,615,651	\$ 1,961,738.25	\$ 653,912.75
Design Contingency	\$ 1,980,786	\$ 353,907	\$ 280,958	\$ 2,615,651	\$ 1,961,738.25	\$ 653,912.75
Fair Wage Premium		\$ 439,913	\$ 750,000	\$ 1,189,913	\$ 892,434.71	\$ 297,478.24
Green Design Features, Garage			\$ 3,050,000	\$ 3,050,000	\$ 2,287,500.00	\$ 762,500.00
<b>Subtotal</b>	<b>\$ 9,282,233</b>	<b>\$ 2,160,038</b>	<b>\$ 5,408,962</b>	<b>\$ 16,851,233</b>	<b>\$ 12,638,425</b>	<b>\$ 4,212,808</b>
<b>GC Total</b>	<b>\$ 48,897,953</b>	<b>\$ 9,238,172</b>	<b>\$ 14,774,241</b>	<b>\$ 72,910,366</b>	<b>\$ 54,682,774</b>	<b>\$ 18,227,591</b>
<b>Other Hard Costs</b>						
Office Tenant Improvements	\$ 3,766,210			\$ 3,766,210		\$ 3,766,210
CIC Improvements	\$ 10,994,310			\$ 10,994,310		\$ 10,994,310
Hotel FF&E	\$ 3,256,000			\$ 3,256,000		\$ 3,256,000
<b>Subtotal</b>	<b>\$ 18,016,520</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 18,016,520</b>		<b>\$ 18,016,520</b>
<b>Total Hard Costs</b>	<b>\$ 66,914,473</b>	<b>\$ 9,238,172</b>	<b>\$ 14,774,241</b>	<b>\$ 90,926,886</b>	<b>\$ 54,682,774</b>	<b>\$ 36,244,111</b>
<b>Soft Costs</b>						
A&E	6% \$ 2,933,877	\$ 554,290	\$ 868,454	\$ 4,374,622	\$ 3,280,966	\$ 1,093,655
Organizational/Professional	2% \$ 977,959	\$ 184,763	\$ 295,485	\$ 1,458,207	\$ 1,093,655	\$ 364,552
Marketing	2% \$ 977,959	\$ 184,763	\$ 295,485	\$ 1,458,207	\$ 1,093,655	\$ 364,552
Financing & Settlement	1% \$ 488,980	\$ 92,382	\$ 147,742	\$ 729,104	\$ 546,828	\$ 182,276
Carrying Costs	4% \$ 1,955,918	\$ 369,527	\$ 590,970	\$ 2,916,415	\$ 2,187,311	\$ 729,104
Development Fees	3% \$ 1,688,979	\$ 318,717	\$ 509,711	\$ 2,515,408	\$ 1,886,556	\$ 628,852
Contingency	5% \$ 2,895,981	\$ 547,131	\$ 875,004	\$ 4,318,116	\$ 3,238,587	\$ 1,079,529
<b>Tenant Start-up Costs</b>						
CIC	\$ 254,835			\$ 254,835	\$ 191,126	\$ 63,709
Hotel	\$ 2,126,000			\$ 2,126,000	\$ 1,594,500	\$ 531,500
Proffers	\$ 1,000,000			\$ 1,000,000	\$ 750,000	\$ 250,000
<b>Total Soft Costs</b>	<b>\$ 15,298,489</b>	<b>\$ 2,251,573</b>	<b>\$ 3,600,852</b>	<b>\$ 21,150,914</b>	<b>\$ 15,863,185</b>	<b>\$ 5,287,728</b>
<b>TOTAL PROJECT USES</b>	<b>\$ 82,212,962</b>	<b>\$ 11,489,745</b>	<b>\$ 18,375,093</b>	<b>\$ 112,077,800</b>	<b>\$ 70,545,960</b>	<b>\$ 41,531,840</b>



## UM LSTP Building 2 Public Infrastructure Costs

### Hard Costs

#### **Building 2**

##### Sitework

##### Excavation, Grading & Utilities

Site Demo/Misc. Sitework	\$	116,375
Earthwork & Grading	\$	60,529
Storm Sewer	\$	30,765
Water & Fire Line	\$	87,780
Sanitary Sewer	\$	20,345
Other Utilities	\$	20,000

##### Roads & Walks

Site Concrete	\$	24,570
Asphalt Paving	\$	101,040

##### Landscaping & Hardscaping

Hardscaping	\$	79,268
Landscaping & Irrigation	\$	90,000
Benches/Trash	\$	5,000

##### Electrical

Lite Poles & Landscape Lighting	\$	20,000
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##### Mechanical

##### Fire Protection

Backflow Preventer	\$	15,000
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##### GC Overhead

23% \$ 157,143.02

**Building 2 Subtotal** \$ **827,815**

#### **Public Innovation Space**

Sitework	\$	624,841
Concrete	\$	302,525
Masonry	\$	153,750
Metals	\$	1,811,900
Woods & Plastics	\$	10,000
Thermal & Moisture Protection	\$	963,940
Doors & Windows	\$	1,193,000
Finishes	\$	655,280
Specialties	\$	20,000
Special Construction	\$	70,000
Mechanical	\$	878,030
Electrical	\$	394,868
GC Overhead and Alt Adds	\$	2,160,038

**Public Innovation Space Subtotal** \$ **9,238,172**

#### **Garage**

Sitework	\$	596,758
Concrete	\$	6,305,777
Masonry	\$	20,000
Metals	\$	132,000
Woods & Plastics	\$	21,704
Thermal & Moisture Protection	\$	6,500
Doors & Windows	\$	55,000
Finishes	\$	476,230
Specialties	\$	42,000
Equipment	\$	100,000
Coveying Systems	\$	265,000
Mechanical	\$	862,678
Electrical	\$	481,632
GC Overhead and Alt Adds	\$	5,408,962

**Garage Subtotal** \$ **14,774,241**

### Soft Costs

24% Building 2	\$	201,759
24% Public Innovation Space	\$	2,251,573
24% Garage	\$	3,600,852

**Soft Cost Subtotal** \$ **6,054,185**

**TOTAL PUBLIC INFRASTRUCTURE COSTS** \$ **30,894,413**



## FINANCIAL QUALIFICATIONS + CAPACITY

### FUNDING OVERVIEW

#### BIOMED REALTY

Since the company's IPO in August of 2004, BioMed Realty (NYSE: BMR) has executed on a capital strategy predicated on managing the company's balance sheet prudently, while simultaneously creating multiple capital sources to fund future investment opportunities. In April 2010, BioMed Realty received investment grade corporate credit ratings from both Standard & Poor's Rating Services ("S&P") and Moody's Investors Service ("Moody's"), with subsequent upgrades from both agencies to BBB and Baa2, respectively. These ratings are a testament to the consistent focus which management has placed on maintaining a solid capital position, in addition to the strong execution of the company's capital strategy.

BioMed Realty's investment grade credit ratings and access to public debt markets, in combination with public equity offerings, provide compelling efficiency in match funding future investments. Since the beginning of 2013, BioMed Realty has publicly raised more than \$1 billion of unsecured bonds and equity capital while simultaneously increasing the size of its unsecured line of credit to \$900 million. The company's strong liquidity position is a direct result of a conservative capital structure which provides the company significant availability and optionality in pursuing future funding alternatives.

As of March 31, 2015, the company's total-debt-to-gross-assets ratio was less than 38% and the company had \$670 million of availability under its unsecured line of credit. With over \$7 billion in gross assets and an equity market capitalization of approximately \$4 billion, BioMed Realty has invested in state-of-the-art research facilities nationwide and in the United Kingdom. The company's strong financial position provides a solid foundation for its team of world-class professionals to continue to execute for its stockholders, clients and partners.

**\$1B**Unsecured Bonds and  
Equity Capital**\$900M**

Unsecured Line of Credit

**\$7B**

Gross Assets

**\$4B**

Equity Market Capitalization



## CORPORATE PROFILE

### WEXFORD SCIENCE + TECHNOLOGY

Wexford Science & Technology, LLC, ("Wexford") a wholly-owned subsidiary of BioMed Realty Trust, Inc., provides real estate strategies and solutions exclusively to universities, academic medical centers, and major research institutions. Wexford works collaboratively with our partner institutions to help create and develop vibrant, mixed-use, amenity-rich "Knowledge Communities," that are built on a foundation of research, discovery, and entrepreneurial activity.

These Knowledge Communities operate as a nexus for leveraging academic intellectual capital, innovation, and infrastructure; concentrating talent, resources, and service providers; and enabling pathways for corporate collaboration, startup creation and growth, and place-based networking and idea exchange. When harnessed into a single location, these elements provide the hub of an innovation constellation that unites a region's innovation ecosystem into a powerful economic development engine.

The live, work, play and learn environment that Knowledge Communities offer helps to advance strategic institutional goals while simultaneously acting as a catalyst for significant regional, economic and community development impacts.

To build a successful live, work, play, learn environment within our Knowledge Communities, Wexford establishes strategic alliances with the industry's leading architects, engineers, general contractors, residential and hospitality developers and specialty consultants. Our partners share our focus on major research institutions as centers of gravity for innovation; our dedication to long-term relationship building; and our commitment to transparency and sound execution.

Additionally, Wexford is able to leverage the financial strength, life sciences industry connections, and premier tenant base of our parent company, BioMed Realty Trust; owners of over 18 million square feet of world-class real estate for the life sciences and biotechnology industries.

**WEXFORD**  
SCIENCE+TECHNOLOGY  
A  BioMed Realty Company

**1998**  
Year Established

**30+**  
Development Professionals

**3.4M SF**  
Research & Support Space  
Developed and Underdevelopment

**6.7M SF**  
Development Potential  
(Total of Wexford and BioMed)

**\$7B+**  
Value of Rentable Space  
(Total of Wexford and BioMed)



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## CORPORATE PROFILE

**"The combination of BioMed Realty and Wexford Science + Technology is ideal to deliver scale, financial capacity, extended industry reach and expanded collaborative and research opportunities for our academic partners, tenants and prospects within our university, technology and medical research communities."**

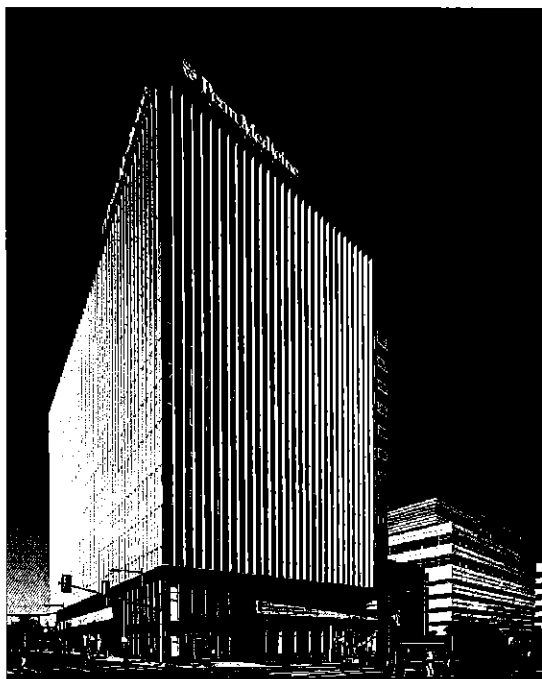
— JAMES BERENS  
PRESIDENT, WEXFORD SCIENCE + TECHNOLOGY

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Finally, with a critical mass of top research universities and growing Knowledge Communities across our portfolio, we created the Wexford Innovation Network; bringing together our university partners and leading companies to promote the exchange of ideas, identification of best practices and creation of value-added programming.

Wexford has planned, developed/redeveloped, financed, constructed, and leased over 2,600,000 square feet of research and research support space. Currently, the firm has an additional 807,250 square feet of research space under development within our Knowledge Communities.

Wexford's capabilities encompass the full life cycle of a real estate project including strategy, master planning, market and feasibility studies, financing, development, construction, marketing and leasing. Our unique combination of strategy, facilities and financial expertise enables us to optimize value and minimize costs for our client partners.



3737 Market Street  
University City Science Center



Flywheel | 525@Vine  
Wake Forest Innovation Quarter



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## CORPORATE PROFILE

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### HISTORY

Wexford Science & Technology, LLC was originally established in 1998 as a business line of Townsend Capital, LLC, a Baltimore-based investment company. The business line was formed by Jim Berens, then President of Townsend, to specifically meet the growing and specialized real estate needs of universities, academic medical centers, and research institutions.

In 2005, Jim and his investors purchased the university business segment from Townsend and named the new company Wexford Science & Technology, LLC.

In May 2013, Wexford Science & Technology merged with BioMed Realty Trust, Inc., (NYSE: BMR) a real estate investment trust (REIT), that delivers optimal real estate solutions for biotechnology and pharmaceutical companies, scientific research institutions, government agencies and other entities involved in the life science industry. BioMed owns, or has interests in, properties comprising approximately 18 million rentable square feet valued at \$7 billion. The company's properties are located predominantly in the major U.S. life science markets of Boston, San Francisco, Maryland, San Diego, and New York/New Jersey.

Additional information is available at [www.wexfordscitech.com](http://www.wexfordscitech.com) and [www.biomedrealty.com](http://www.biomedrealty.com).

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### EXPERIENCE IN URBAN CENTERS

A vibrant and stimulating physical environment is essential to a successful Knowledge Community. Alongside our lab and office space developments, these ecosystems are furnished with hospitality, conference centers, residential units and complementary retail activity, which enlivens the streetscapes and enhances the pedestrian experience to create an activated, engaging mixed-use live, work, play and learn environment.

Mainly located in urban communities, including major cities like Philadelphia, Baltimore, Miami and St. Louis, Wexford strategically positions our projects and assists in the development of the master plans to incorporate into them the aspects of a Knowledge Community including: physical environment, innovation ecosystem, community engagement and collaborative connectivity.

Our projects in urban centers include:

- University City Science Center, Philadelphia, PA
- University of Maryland BioPark, Baltimore, MD
- Cortex Innovation Community, St. Louis, MO
- Bio-Research & Development Growth Park, St. Louis, MO
- University of Miami Life Science & Technology Park, Miami, FL
- Innovation Research Park @ ODU, Norfolk, VA
- University Technology Park at IIT, Chicago, IL
- The Chesterfield, Durham, NC



## CIC

Cambridge Innovation Center (CIC) is a global organization, founded in Cambridge, Massachusetts, that creates infrastructure to support and strengthen urban innovation ecosystems.

CIC's flagship location in Cambridge, MA, known as Cambridge Innovation Center, founded in 1999, is the world's largest startup facility, housing close to 800 companies in two buildings across more than 200,000 square feet of space.

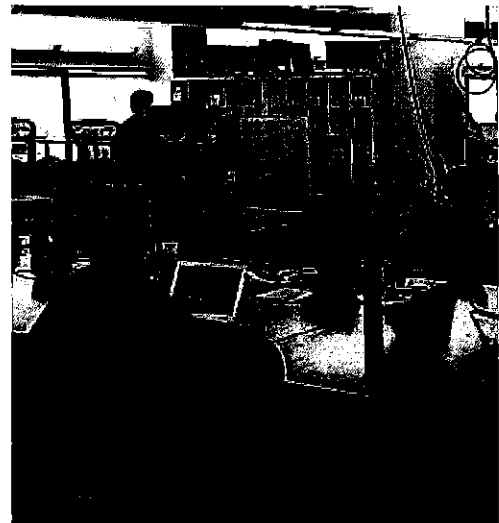
CIC's unique approach has proven to attract substantial venture capital and the presence of corporate technology giants. CIC develops a city's entrepreneurial talent base and assists a city in becoming globally competitive as an innovation hub.

Companies started at CIC have seen success large and small. Android, the largest mobile phone operating system in the world, was founded at CIC. After being purchased by Google, the Android team's core strength and the innovation environment of Kendall Square attracted Google to start an operation in Cambridge. Google's Cambridge office, which stayed a CIC client for many years until it outgrew CIC's space, now spans over 300,000 square feet (bigger than CIC itself!), and employs over 800 people.

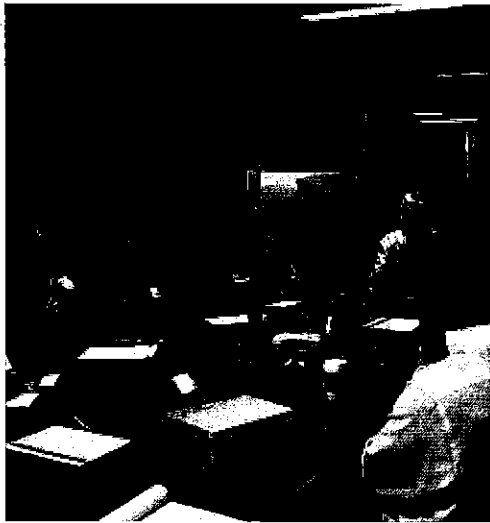
The strength of the entrepreneurial ecosystem at CIC has brought other benefits as well, attracting funding sources to the area. CIC's two main Cambridge buildings are home today to more than \$7B of venture capital, putting just this CIC location ahead of most US states, and approximately equivalent to all the venture capital in Europe.

In addition to startup companies, their acquirers, and venture capital, CIC also forms a magnet for large innovation companies. Amazon, Apple, Facebook, Disney, Royal Dutch Shell, Boeing, and many others have established substantial presences within CIC buildings, in most cases their first presence in the region.

CIC is viewed as the global gold standard for this type of facility, and is regularly visited by heads of state and innovation leaders from all over the world. The Brookings Institution, a world-famous think tank, cites CIC as having formed the core of the







Kendall Square, the single most successful innovation district in the world, by the numbers.

CIC has built this model successfully in Cambridge, Massachusetts, Boston, Massachusetts and St. Louis, Missouri, has signed an agreement to build similar facilities in Baltimore, Maryland, and is currently evaluating several other cities in the United States and around the world. CIC has also recently signed its first overseas assignment, a landmark agreement with the city of Rotterdam, the Netherlands' industrial capital and Europe's largest port, to realize this vision.

### **Venture Café Foundation**



The Venture Café Foundation (VCF) is a nonprofit organization dedicated to helping innovators make the world a better place by envisioning, implementing and managing initiatives and programs that build, strengthen, and connect the innovation community. VCF was founded by Tim Rowe of CIC as the nonprofit sister organization to CIC. CIC originally formed VCF to lead innovation events, programming, and education efforts at its flagship Cambridge facility. Its weekly Venture Café Thursday afternoon/evening gathering has grown to become the Boston area's premier innovation event. VCF now takes a major role in a host of other important initiatives helping build Boston's global leadership in innovation and entrepreneurship.



One of the pillars of VCF's mission is to build a more inclusive innovation economy, meaning broadening access to educational and work opportunities in the innovation economy for women, minorities and low-income community residents. To achieve this mission in Miami, VCF would play a leadership role in support of CIC and the LSTP Innovation Cluster in two major areas:

- **Building an innovation ecosystem through events and programming** — VCF would play a critical role in managing a variety of initiatives aimed at building a robust innovation ecosystem to promote entrepreneurship, commercialization of research, and collaboration among the array of university, institutional and business resources. VCF would serve as a platform and connector for other organizations that share its mission.



- **Facilitating community partnerships and creating a “Digital OnRamp”** — The core mission of VCF is to provide bridges into the normally closed world of startups, innovation, entrepreneurship, technology and venture capital, by promoting education, workforce and economic opportunities in the innovation economy for low-income community residents through educational, internship and skills development opportunities.

The goal is to open access through a “Digital OnRamp” to the broadest community, especially those populations who are often excluded: women, minorities and the low income community. VCF would partner with local institutions and organizations to increase access to education, workforce and business opportunities in the life science, biotechnology, technology, and startup sectors for these populations. One excellent example of a potential local partner organization is Code Fever, a nonprofit that provides computer programming classes to underserved minority students between the ages of 13 and 21. VCF aligns with Code Fever’s mission to inspire students to “build and create technology enterprises within their communities, close the gap in technology education, and become leaders in STEM fields by increasing the number of young startup founders.”

VCF would be an important resource to all of the Innovation Cluster components and University of Miami institutional and civic partners by integrating its goals of “Building an Innovation Ecosystem” and “Creating a Digital OnRamp” into the broader LSTP agenda.

